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LITTLETON'S TENURES IN ENGLISH

EUGENE WAMBAUGH, SIR THOMAS
LITTLETON

Littleton's Tenures In English

Eugene Wambaugh, Sir Thomas
Littleton

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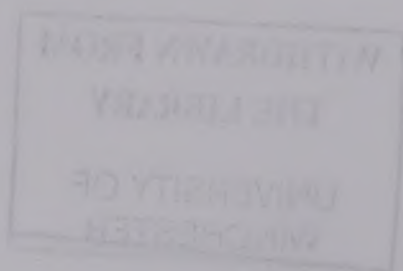
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LITTLETON'S TENURES

IN ENGLISH

Legal Classic Series

LITTLETON'S TENURES

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LITTLETON'S TENURES

IN ENGLISH

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JOHN BYRNE & CO.

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1903

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LITTLETON'S TENURES

IN ENGLISH

Second Edition

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THIS EDITION
IS DEDICATED TO
THE LEARNED SOCIETY WHEREIN
LITTLETON
FOR MORE THAN FOUR HUNDRED YEARS
HAS BEEN REGARDED WITH PECULIAR VENERATION—

The Inner Temple.

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PREFACE.

UNFORTUNATELY, it is not possible to fix the exact date of Sir Thomas Littleton's birth; but the year was certainly in the earliest part of the fifteenth century, and thus this edition of *The Tenures* serves to commemorate—though, doubtless, only approximately—the five hundredth anniversary.

The occasion obviously makes it proper to present a somewhat elaborate account of the author's life and to give as complete a list as practicable of the editions of this book. Hence, in a search for facts or points of view heretofore possibly overlooked, much time has been spent in the neighborhoods where Littleton lived and worked, and still more time with manuscripts and printed books in many hospitable libraries.

Yet while it has seemed appropriate to prepare thus a new biographical and bibliographical introduction, it has seemed equally requisite not to give a new translation, but simply to edit the translation adopted by Coke. This familiar version, to be sure, is not perfect.

It appears to be chiefly a reprint of the work of some early and rather unscholarly translator, with merely such modernization in language as was required by the taste of Coke's day. It contains even more numerous interpolations than are pointed out by Coke himself. It omits many authentic passages. Now and then it mistranslates. Nevertheless it has several strong recommendations. To begin with a matter of form, this version is expressed in an archaic phraseology peculiarly appropriate for such a book, and, fortunately, the only archaic phraseology with which all present readers may fairly be expected to be acquainted—the diction of Shakespeare and of the King James Bible. To pass to a more practical point, this version long ago became the standard representative of the words of Littleton, and it has been quoted in countless arguments and opinions and treatises; and hence, in an edition intended—as is this present edition—to be as serviceable as possible to the profession, this common version should be followed, unless, indeed, such a course will lead to harm. To come finally to matter of substance, upon careful examination this version, while open to criticism as already indicated, has been found to give almost invariably an accurate view of the author's meaning. These, then, are the reasons for deciding to reprint, with neither omission nor addition, the now venerable standard version as given in Coke upon Littleton, and to insert such marks and foot-notes as will enable the

reader to make amendments, if he wishes, in accordance with the most trustworthy editions in Law French. No changes have been made in the text, with the exceptions that antique punctuation and capitalization and spelling have not always been preserved, and that a very few peculiarly annoying mistranslations, based upon mere misprints and the like, have been corrected in instances which the foot-notes fully explain. Passages believed to be spurious have been inclosed in brackets. Passages that ought to be inserted have been printed in the foot-notes, and have been there inclosed in braces. Many other amendments have been suggested in the foot-notes. The rule has been to disregard matters of no appreciable importance; but old-fashioned standards have sometimes been taken into account in deciding what is important, and thus it has happened that variations as to "item" and "nota" and "&c." have received attention in accordance with the views emphatically expressed by one whom an editor of Littleton learns to respect more and more—Sir Edward Coke.

E. W.

January 1, 1903.

INTRODUCTION.

I.

BIOGRAPHY.

ONE of the most famous books ever written is this small volume containing an orderly and exact presentation of land law at the time midway between the Norman Conquest and the present day. There have been so many changes in the law that doubtless many lawyers consider this treatise obsolete. Yet land law is altered less rapidly and less radically than other branches, and this is one reason why this little classic has outlived the author by four centuries; and even if the lapse of time had rendered the work useless as an introduction to existing law, its arrangement, conciseness, and accuracy would continue to gain for it the favor of any one who appreciates a masterpiece.

Littleton is far from being either the earliest or the latest of the great legal authors. Glanville, Bracton, Littleton, Coke, Blackstone: these are the five masters. The approximate dates of these five writers are strangely easy for an American lawyer to bear in mind. Glan-

ville wrote just before, and Bracton just after, the signing of Magna Charta gave a starting point for American constitutional law. Littleton wrote just before the discovery of America created the possibility that not merely a few islands but the greater part of the world may be governed by law that had its earliest home in England. Coke wrote in the time of Elizabeth and the first two Stuarts, when Shakespeare and Bacon and the King James version of the Bible were unconsciously laying the foundations of American thought and letters, and when the colonists of Virginia and New England were bringing the English law to its new and larger home. Finally, Blackstone wrote just before the ideals encouraged by religion, literature, and the law resulted in American independence.

Although Littleton stands third in chronological order among the five famous authors named, there is one point of view from which he may fairly be called the earliest great writer upon the law of England; for, whereas in form or in phraseology, though not in essence, the works of Glanville and Bracton are somewhat affected by Justinian's Institutes, this treatise by Littleton is wholly free from any tincture of the law of Rome. In short, this is the first important law book that is thoroughly English. Apparently, Roman law was not studied by Littleton. The reason for the appearance of a distinctly national book is not difficult to find. The reforms of

Henry the Second, Edward the First, and Edward the Third had resulted in a fairly complete system. The land law had always been largely the mere local law of England; and it became still more strictly local through Magna Charta, and the statutes of Merton,¹ of Westminster I.,² of Gloucester,³ of Westminster II. (*De donis conditionalibus*),⁴ and of Westminster III. (*Quia emptores*).⁵ The development of a systematic body of law had been still further aided by the Year Books. Finally, the growth of the inns of court, which date either their foundation or their conspicuous importance from the fourteenth century, had furnished an organized profession, studying the English law in both a practical and a scientific spirit. The inevitable result must have been before long a law book that should be English through and through—a book built upon the author's own perception of practices actually existing and upon his knowledge of English statutes and of English decisions.

Enough is known of Littleton's professional career to explain how he happened to be well fitted to write such a book; but little is known of his birth, his early training, his character, and, in short, of the man himself.

In the neighborhood called Frankley, six miles southwest of the center of a peculiarly modern city, Birming-

¹ 20 H. III. (1235-6). ² 3 E. I. (1275). ³ 6 E. I. (1278).

⁴ 13 E. I. (1285). ⁵ 18 E. I. (1290).

ham, which in Littleton's time was a mere village, is the site of Frankley Manor House, the traditional place of Littleton's birth, residence, and death. The house disappeared in the time of the Commonwealth, for in 1642 Prince Rupert, after holding it in the interest of the Royalists, found himself unable to prevent its falling into the hands of the Roundheads, and therefore destroyed it.¹ Nothing remains save the indications of a moat, inclosing about two acres of ground, and, within the inclosure, two depressions, each about thirty feet wide by about fifty feet long and about four feet deep; and these depressions undoubtedly indicate the position of buildings.² In a fence near by are two carved stones that seem to have been part of the Manor House; and in St.

¹ Jeayes' Catalogue of Charters and Muniments of the Lyttelton Family (hereafter cited as Jeayes), introduction, p. viii. The family documents preserved from early dates are so numerous that apparently the destruction of the Manor House was preceded by a systematic removal of documents to some place of safety.

² The house may not have been as large in Littleton's time as when it was destroyed; for one of his heirs is said to have spent a large sum in rebuilding it. Collins' Peerage, Brydges' ed., vol. VIII., p. 838.

There are manuscript pedigrees of the Lyttelton family in the possession of Viscount Cobham at Hagley Hall, in the British Museum (Harleian MS. No. 5814), and at the Harvard Law School (inserted in a copy of Co. Lit., second ed.). No one of these is ancient, or more authoritative than the accounts in the eighth volume of Collins' Peerage, Brydges' ed. (hereafter cited simply as Collins), which is largely based upon family papers and is usually correct.

Leonard's Church, about six hundred feet to the east, are other stones that probably came from the same ruin.¹ This is all that remains of the old home, unless, indeed, one should take into account a neighboring fish pond, said to date back to Littleton's time, and called Westminster Pond, the name commemorating, according to tradition, the supposed fact that the pond is just as large as Westminster Hall, and also, possibly, commemorating the rather more certain fact that in Westminster Hall Littleton sat as Judge of the Common Pleas.

There are several old landmarks in the region. St. Leonard's, already spoken of, the present parish church of Frankley, was in Littleton's time a chapel,² probably intended for the servants and tenants of the manor; and, notwithstanding extensive restorations, parts of the western wall appear to belong to that early day. Some three miles to the northwest stands the church of Halesowen, which, when Littleton lived, was the parish containing Frankley Manor;³ and this latter church also has parts that date back to the same time. These two churches were closely connected with the life of Littleton, and once contained memorial windows presenting portraits of him. Not far from the Halesowen

¹ Stanton's *Rambles and Researches among Worcestershire Churches*, vol. II., p. 101.

² Stanton's *Rambles and Researches among Worcestershire Churches*, vol. II., p. 97.

³ Jeayes, *Introduction*, p. iv.; Stanton's *Rambles and Researches among Worcestershire Churches*, vol. II., pp. 97-98.

church are the ruins of Halesowen Abbey,¹ a great religious house in Littleton's day. That Littleton was well acquainted with these two churches and with this abbey is shown clearly enough by bequests to each of them in his will. Still other neighboring churches are of the same date, and so are some castles that are somewhat farther away. About eight miles to the northwest of Frankley are the ruins of Dudley Castle, and about twenty miles to the southeast are Warwick Castle and the shell of Kenilwörth. Besides these churches and castles, there is nothing near at hand to remind one of Littleton's time except the land itself; and in Frankley, in spite of the disappearance of the greater part of the forest with which the manor is said to have been almost covered five centuries ago, and in spite of the improved roads and fences, the land certainly does remind one of those mediæval days; for there is not in the whole three or four square miles of Frankley a village, or even an inn. Not far to the north may be seen the chimneys of Birmingham, and toward the west may be seen the smoke by day and the fire by night which mark the region famous as the "Black Country"; but Frankley itself is still rural, a mere neighborhood of farms.

¹ An engraving depicting the ruins of the abbey is given in Nash's Collections for the History of Worcestershire, vol. I., p. 490. The destruction of the abbey is described in Amphlett's Short History of Clent, pp. 70-71, 164, where it is said that the ruins of the abbey furnished some of the stone for Hagley Hall, the present home of Littleton's heir.

In fact, there are few spots more appropriate to be associated with the memory of an author who has done much to bring down to the present time a picture of the land law of the middle ages.¹

Frankley Manor, even at this day in the hands of Littleton's heir,² was part of the estate of the author's grandfather, also named Thomas Littleton.³ This grandfather had but one child, a daughter. When this daughter, Elizabeth, married Thomas Littleton's father, Thomas Westcote,⁴ it was agreed that, as the estate which would ultimately come to the heiress was large, and as it was desirable to keep alive the Littleton name, the first-born son should be called Littleton. The first-born son was the author; and thus it happened that,

¹ It is not improbable that the rural flavor of Frankley will soon largely disappear. Vast reservoirs for supplying Birmingham with water are in process of construction a quarter of a mile east of the parish church, on part of the old manor. The reservoirs are to be supplied from the mountains of Wales, some seventy miles distant, through a conduit that runs beneath the site of the old Manor House. All work has been so conducted as not to change the surface of the ground near the old home; but Frankley has clearly been brought closer to Birmingham.

² In 1601 the Crown went into possession because of the attainder of John Lyttelton, implicated in the plot of Lord Essex. The estate was restored in about a year and a half. With the exception of this slight break, the Manor of Frankley has belonged to the family continuously. Jeayes, introduction, pp. vii.-viii.

³ He died in 1422. Jeayes, introduction, p. xv.

⁴ He died in 1450, according to the pedigree in Jeayes, introduction, p. xv.; but this is inharmonious with his wife's appearing in 1417 as the wife of Thomas Heuster. *Vide infra*, p. xviii., n. 2.

although his three brothers and four sisters were named Westcote, the name under which he and his book are still famous is Littleton.¹

Although tradition is clear to the effect that Littleton was born at Frankley Manor, neither record nor tradition furnishes the exact date. All that can be asserted with certainty is that Littleton was born in the early years of the fifteenth century.²

The place and the manner of Littleton's early education are unknown, but it is possible to ascertain some of the influences that from the first surrounded him.

¹ Visitation of Worcestershire, 1569 (Harleian Society's Publications, vol. 27), p. 92.

There is an ancient tale that Littleton's mother often begged his brothers and sisters to change their name likewise, and, upon their refusal, asked them "whether they thought better of themselves than their elder brother," and that they answered that "he had a fair estate to alter his name, and if they might share with him they would do the like." Collins, p. 320.

The name has been spelled in many ways, e.g.: Littelton, Littilton, Littulton, Littylton, Lutilton, Luttelton, Luttleton, Lyttelton, Lyttilton, Lyttylton. Jeayes, *passim*. The author's heir spells the name Lyttelton. Some other descendants spell it Littleton, as it has usually been spelled by lawyers.

² The date most usually given is 1432. This is based upon the statements in the MS. pedigree at Hagley Hall and in Collins, p. 323, that Littleton died in 1481 aged about sixty. Birth in 1422 is inharmonious with the known dates of Littleton's prominence in the profession. It is inconsistent also with the fact that Littleton's mother, having married a second time, appears as early as 1417 to be the wife of Thomas Heuster. Jeayes, Nos. 274 and 276. In 1440 a grant of land was made to "Thomas Littulton, son of Thomas Heuster." Jeayes, No. 266. The date (1402) in the Dictionary of National Biography, vol. XXXIII.,

His grandfather was a courtier¹ for many years, including the last days of a more famous courtier—Chaucer. Littleton's father also was a courtier,² and a contemporary of King Henry the Fifth, to-day better known as Shakespeare's Prince Hal. Thus, whatever Littleton may have learned from schoolmasters and from books, he certainly had the kind of education which comes from associating with people who have been about the world. Surely there must have come from London to Frankley Manor some part of the modern atmosphere that makes Chaucer seem to be almost of our own time; and although the Tenures must be conceded to be one of the gravest of books, it must have been strange indeed if the lively poems of Chaucer and the equally lively doings of Prince Hal did not reach the ears of the young Littleton, even in his remote birthplace. Further, it must have been stranger still if there did not come to

p. 373, is a misprint for 1422. The earliest date practicable, if one follows the tradition that Littleton was born in Frankley Manor House, appears to be 1407, when Littleton's grandfather seems to have recovered the manor by writ of right on the dying out of the Tatlingtons, a remote branch of the family. Jeayes, introduction, p. vii.

¹ "Esquire of the body to three successive kings, viz. Richard II., Henry IV., and Henry V." Collins, pp. 318-319. In Calendar of Patent Rolls, 1377-1381, p. 442, under date of Feb. 27, 1380, is found: "Pardon, at the supplication of the King's esquire, Thomas de Littleton, to William Wecheford for the death of John Ruseleye, killed on Sunday before the feast of St. Gregory, 2 Richard II."

² "The King's servant in court." Co. Lit., preface.

that quiet spot tales of Robin Hood, whose exploits had had their reputed scene some fifty miles to the northeast, and tales of King Arthur, whose legendary home had been fifty miles in exactly the opposite direction; for the adventures of Robin Hood and of the Knights of the Round Table, though not yet reduced to writing, were already popular literature. Again, Littleton's attention must early have been directed to stirring events in history; for in almost every direction there was within a day's ride some historic spot: Worcester Cathedral, with the tomb of King John; Evesham, in the time of Edward the First the place of the defeat and burial of Simon de Montfort; Coventry, in the time of Richard the Second the place appointed for the combat between Henry Bolingbroke and the Duke of Norfolk; Shrewsbury, in the time of Henry the Fourth the center of the exploits of Owen Glendower and Harry Hotspur. Finally, the representatives of systematic learning were near at hand in the persons of the numerous ecclesiastics in the two great religious houses of the neighborhood—Halesowen Abbey and the monastic establishment adjacent to Worcester Cathedral. From all this it is obvious that Frankley, though remote from London, was in the midst of much that was capable of broadening the mind.

Coke says that Littleton attended "one of the universities";¹ but there is no verification of this. In those

¹ Co. Lit. 235, b.

days the state of learning in the universities was deplorable,¹ the Latin of Oxford being then quite as notorious as the French of "Stratford atte Bow" that was ridiculed by Chaucer; and even if Littleton attended a university the more important part of his education must have been obtained elsewhere. The inns of court and of chancery were the favorite places where learning and social graces were then sought even by persons who did not intend to become lawyers. Students commonly began with an inn of chancery, and passed thereafter to an inn of court. It is not known whether Littleton was a member of an inn of chancery; but there is good reason for asserting that his inn of court was the Inner Temple.²

Although there is no account of Littleton's career as a student of law, the deficiency is well supplied by a familiar passage in the treatise of his contemporary, Sir John Fortescue, *De Laudibus Angliae*. After making allowance for the enthusiasm that seems to color this celebrated passage—an enthusiasm natural enough, for Fortescue wrote it when his taking the field as a soldier in the Wars of the Roses had driven him from the Chief Justiceship of the King's Bench into exile in

¹ Hallam's *Literature of Europe*, vol. I., part I., chap. II., sect. 26, and chap. III., sect. 70.

² This was the inn of court to which belonged Richard Littleton, for whom this treatise was written. *Calendar of Inner Temple Records*, vol. I., p. 1. To the present day, this has been the inn of most of the lawyers descended from the author.

France, and when his special purpose in writing was to inspire the Lancastrian heir apparent with an admiration for English law,—it is nevertheless clear that education in the inns of court consisted of systematic work, including attendance at lectures and at court and the discussion of actual and hypothetical cases; and, still better, it is also clear that students and lawyers lived together, argued together, and together breathed an atmosphere charged with companionship, emulation, and law.¹ As eight years constituted, apparently, the usual period of a student's residence, and as, despite the non-existence of many topics since developed, the law was already endowed with two of its most intricate subjects, real property and special pleading—the latter already developed to an extent that to-day meets disapproval,²—it is obvious that the education received in the inns may have been quite as thorough as that given in any modern law school.³

It is not known in what year or at what age Littleton completed this long preparation for practice, nor with what rapidity he achieved professional success. Moreover, the earliest events subsequent to his admission to

¹ Fortescue *De Laudibus Angliæ*, chapters xlviii. and xlix.

² Stephen on Pleading, appendix, 2d. ed., note 38, or 5th ed., note 28.

³ The education of lawyers in the next two centuries is described by reports of Thomas Denton, Nicholas Bacon, and Robert Cary, in Waterhous, *Fortescutus Illustratus*, pp. 539, 543; and 3 Co. Rep., preface, pp. xxxv.-xxxvii.; and Dugdale's *Origines Juridicales*, second ed., pp. 159-160.

the bar are of doubtful chronological order and most of them of uncertain date. Apparently, between 1440 and 1450 several important events happened; for it seems that between these dates he was married, his professional services were requested against the now famous family of the Pastons, and he was escheator of Worcestershire, undersheriff of the same county, and recorder of Coventry.

Littleton's marriage was in or before 1444, because in that year his wife is named in a license whereby the Bishop of Worcester authorized the celebration of low mass in Frankley Manor House,¹ in the oratory which is shown by Littleton's will to have been dedicated to the Trinity. His wife was Joan,² widow of Sir Philip Chetwynd, of Ingestrie, Staffordshire, and one of the daughters and co-heirs of Sir William Burley, of Broms-

¹ This license was dated Jan. 30, 1443-4. On Aug. 27, 1427, a similar license had been granted to Maud, widow of the Judge's grandfather. Stanton's *Rambles and Researches among Worcestershire Churches*, vol. II., p. 98.

² Collins, p. 322. She died March 22, 1505, according to Collins, p. 329. The MS. pedigree at Hagley Hall gives the same date, but also gives the inquisition *post mortem* as Nov. 26, 20 H. VII. (1504). The year of death is given as 1505 in Nash's *Collections for the History of Worcestershire*, vol. I., opposite p. 493, and in Jeayes, introduction, p. xv. An inspection of the authorities shows that those giving 1505 are not independent, but probably have a common source. According to Collins, p. 380, the inquisition *post mortem* found that the heir was Sir William Lyttelton, aged about sixty.

³ In *Notes and Queries*, sixth series, vol. VII., pp. 47-48, 312, are comments pointing out difficulties as to the genealogy of Littleton's wife.

croft Castle, Shropshire, Speaker of the House of Commons in 1436 and again in 1444.

It was between 1445 and 1449 that a letter was addressed to the Archbishop of Canterbury, Chancellor of England, from John Hauteyn, chaplain, saying that the writer had divers suits and actions to be sued against the widow of Sir William Paston, and could get no counsel because Sir William Paston had been a Justice of the Common Pleas and his son and heir, John Paston, was also "a man of court," and praying "that it please your good Lordship to assign and most strictly to command John Heydon, Thomas Lyttylton, and John Olston, to be of counsel with your said beseecher;" and it is added that "your said beseecher shall content them well for their labour."¹ This is of interest as indicating that at this date Littleton was a member of the bar and was already considered a desirable adviser.²

Littleton's service as escheator of Worcestershire be-

¹ Paston Letters, Gairdner's edition, vol. I., p. 60. Littleton's grandson married the granddaughter of this Sir William Paston. Visitation of Worcestershire, 1569 (Harleian Society's Publications, vol. 27), pp. 93-94. The John Paston named in the letter was of the Inner Temple. Calendar of Inner Temple Records, vol. I., introduction, pp. xv.-xvi. Littleton is also mentioned in the Paston Letters, Gairdner's ed., vol. I., pp. 384, 392, 407; vol. II., pp. 144-145; vol. III., p. 428.

² A clearer indication that Littleton was successful in practice is found in his receiving from Sir William Trussel, in 80 H. VI. (1451-2), a grant of the manor of Sheriff Hales, Staffordshire, for life, "*pro bono et notabili consilio*." Collins, p. 228. This Sir William Trussel was apparently the brother-in-law of Littleton's wife. Notes and Queries, sixth series, vol. VII., pp. 47-48, 312.

longs apparently to this same part of his life.¹ This office had for its chief duties the ascertaining and enforcing, especially through inquisitions *post mortem* with a jury, of the Crown's right to wardship, marriage, relief, escheat, and other feudal incidents; and it is clear that service of this sort would give exactly the varied and practical knowledge of land law which would be of inestimable value to the author of a treatise on tenures.

Littleton's service as undersheriff of Worcestershire began in 1447 and lasted for one year.² The office of high sheriff appears to have been an hereditary right of the Earl of Warwick; but service as undersheriff did not bring Littleton, as has sometimes been supposed, into association with the celebrated Richard Neville, better known as Warwick the King-maker. It was not until 1449 that Richard Neville, by reason of his wife's then inheriting the Beauchamp estates, was created Earl of Warwick. From this last date it may well be true that Littleton, whose career had much to do with Worcestershire and Warwickshire, was frequently brought into contact with the Earl of Warwick, who became the chief landowner and soldier and statesman of that region, and indeed of all England; but it is not now possi-

¹ Collins, p. 821. There was a property qualification. St. 32 E. III. c. 5 (1368); St. 12 E. IV. c. 9 (1472).

² Public Record Office List and Indexes, vol. IX., p. 157; St. 23 H. VI., c. 8 (1444).

ble to state the connection between Littleton and the earl, and this is not strange, as the time of the Wars of the Roses is a peculiarly obscure part of English history, and historians have only recently begun to give adequate attention to the career of Warwick himself.¹

It was at some time within this decade that Littleton became recorder of Coventry; and thus it happens that the decade closes with a glimpse of Littleton in the midst of a picturesque scene. The office was within the gift of the corporation, which held the earliest municipal charter that is known to have been granted.² Although Coventry is in Warwickshire, there is nothing to connect Littleton's appointment with the Earl of Warwick. The office was of great dignity, for a few years later Henry the Seventh described it as "one of the most honor and substance in this our realm."³ The recorder's duties were largely judicial. The room in which Littleton as recorder most probably held court is still to be seen. It is the chief room in St. Mary's Hall. As this is a room that must also have been well known to a later celebrated recorder of Coventry—Sir Edward Coke,⁴—this ancient building has for lawyers an interest inferior to no other building save Westminster

¹ Oman's *Warwick the Kingmaker*. p. 1.

² *Gross' Gild Merchant*, vol. I., p. 98, n. 3.

³ *Poole's History and Antiquities of Coventry*, pp. 368-370.

⁴ Coke was recorder of Coventry from 1613 until his death. *Johnson's Life of Coke*, vol. II., p. 358; *Poole's History and Antiquities of Coventry*, p. 87.

Hall, the Temple Church, and the Guildhall of London. The ordinary service of a recorder, however, is not picturesque; and the picturesque scene in which Littleton as recorder played a part was incident to a non-judicial event. In 1450 Coventry was visited by Henry the Sixth. The ceremonies are carefully described in a minute that may have been composed by Littleton himself. The account of the King's receiving at the old Priory the Mayor and the other representatives of Coventry contains this passage as to the spokesman: "Thomas Lytelton, then recordur, seyde unto the Kynge suche wordes as was to his thynkyng. most pleasaunt; oure soveren lorde seyeng agayne the wordes: 'Sir, I thank you of youre goode rule and demene, and in spesiall four youre goode rule the last yere past, for the best ruled pepull thenne within my reame; and also I thank you for the p'sent that ye nowe gave to us.' The which p'sent was a tonne of wyne and xx'tie grete fat oxen."¹

Possibly it is to some year in the same decade ending in 1450 that one ought to assign Littleton's service

¹ Gentleman's Magazine, (1792) vol. 62, part II. p. 985.

Coventry was a favorite retreat of Henry the Sixth and his wife, and was called "the Queen's secret arbor." Poole's History and Antiquities of Coventry, p. 87.

To this time of Littleton's life pertains an entry to the effect that in 1455 he deposited with the Exchequer a record of jail delivery taken before himself and others at Coventry in 29 H. VI. (1450-51). Antient Kalendars of the Treasury of the Exchequer, vol. II., p. 229.

as reader to the Inner Temple. This office was a great distinction, and it brought with it a serious pecuniary burden in the shape of a requirement that the reader should give a great banquet; but this burden was not as heavy in Littleton's time as it became later. Littleton is the earliest known reader to the Inner Temple, and this is probably the reason why Littleton's arms are the earliest displayed in the window of the hall of the inn.¹ This part of Littleton's career has an interesting bearing upon the Tenures. In those days the reader delivered his course of lectures to an extremely critical audience, composed of students, barristers, serjeants, and judges, and it was the audience's privilege and duty to question the reader and to dispute his statements and conclusions.² Appointment to such a trying office was in itself a proof of good repute for clearness and accuracy; and as those virtues would obviously be increased by the performance of the reader's task, the qualities that have contributed most largely to the fame

¹ Tombs, windows, engravings, and other memorials to Littleton and his descendants may be identified by the family arms, which in books on heraldry are described thus: argent, a chevron between three escallops sable.

² Reports by Thomas Denton, Nicholas Bacon, and Robert Cary, in Waterhous' *Fortescutus Illustratus*, pp. 539, 543-545; Stow's *Annals*, 1631 ed., p. 1074; Stow's *Survey of London*, Thoms' ed., pp. 29-30; 3 Co. Rep., preface, p. xxxv.; Co. Lit. 280; Dugdale's *Origines Juridicales*, second ed., pp. 159-161; Herbert's *Inns of Court*, pp. 172-181; Pearce's *Inns of Court*, chap. IV.; *Calendar of Inner Temple Records*, vol. I., introduction, pp. xxxii.-xxxiii.

of the Tenures may have close connection with this short term of service as reader. At any rate, there is at least one certain connection between this reading and the Tenures; for Littleton selected as the subject of the reading the statute of Westminster II., *De donis conditionalibus*,¹ and by thus electing to discuss estates tail he indicated his taste for land law and at the same time gathered material that must have been useful in composing the first few chapters of his treatise.

Service as reader usually led to appointment to be a serjeant at law, and this promotion came to Littleton in 1453.² There are interesting accounts of the creation of serjeants,³ and any one may easily find realistic details with which to surround an imaginary, but approximately accurate, picture of Littleton going through the ceremonies of taking upon himself "the state and degree of a serjeant at law," as the phrase ran, and distributing gold rings and liveries, and participating with the other new serjeants in giving a feast that should last a week and rival in splendor the feast attendant upon a

¹ The reading is preserved in the British Museum, Harleian MS. 1691.

² *Calendarium Rotulorum Patentium*, 297; Dugdale's *Origines Juridiciales*, second ed., *Chronica Series*, p. 65; Foss' *Judges of England*, vol. IV., p. 245. According to Dugdale the appointment was on Feb. 1, and the ceremony on July 2, and the serjeants created at this time were Hindstone, Laken. Wangford, Boeff, Littleton, Choke. Needham, and Billing.

³ Fortescue *De Laudibus Angliae*, chap. L.; Dugdale's *Origines Juridiciales*, second ed., pp. 111-138.

coronation. It is more important, however, to notice that entrance upon the position of serjeant made Littleton one of the small group of lawyers having a monopoly of practice in the court which had the most to do with questions of land law—the Common Pleas,—and then to ascertain, if possible, how much Littleton's business was affected by accepting this expensive promotion. Unfortunately, the Year Books of that time are scanty and confused; but, as nearly as can be discovered, it seems that in the year before Littleton became a serjeant he was concerned in five reported cases, all of them in the King's Bench, where, by the way, his great contemporary, Fortescue, was then Chief Justice, and that in the year after promotion he was counsel in twenty cases, all of them in the Common Pleas, besides delivering alone or with other serjeants six non-judicial opinions.¹ After allowances are made for the fact that the Year Books are principally devoted to cases in the Common Pleas, it seems probable that, partly because of the monopoly enjoyed in that court by the serjeants, and partly because of the mere *prestige* of promotion, Littleton's preferment was decidedly to his pecuniary advantage. To a prospective writer upon law, however, the chief benefits of the advancement were that it brought him into closer association with the most

¹ This computation is based upon the belief that Y. B. 32 H. VI., 1, Trin., pl. 3 and 4, should be assigned to 31 H. VI., and that Y. B. 33 H. VI. 1-12, Hil., should be assigned to 32 H. VI.

learned members of his profession and at the same time encouraged brief and accurate statements of opinion; for serjeants, a sort of perpetual *amici curiae*, aided the judges of the Common Pleas in cases in which they themselves were not counsel.¹

In 1455, on May 13, just nine days before the first battle of St. Albans, the opening contest of the Wars of the Roses, Littleton was appointed one of the King's Serjeants.¹ This promotion brought no increase in court business, as far as can be ascertained from the Year Books, but it brought a substantial advance in dignity and responsibility. The King's Serjeants were actual advisers of the Crown,² and stood at the head of the profession, in those days outranking the Attorney General.³ Besides, like most King's Serjeants, Littleton was also commissioned as a justice of assize.⁴

At this point one inevitably encounters the question

¹ According to Co. Lit., preface, Littleton while serjeant at law was made Steward of the Court of the Marshalsea.

² Dugdale's *Origines Juridiciales*, second ed., *Chronica Series*, p. 67.

On the next day, along with the Earl of Warwick, Sir John Fastolf, and many others, he was appointed upon a commission to raise money for the defense of Calais. In this commission he was a representative from Worcestershire. Proceedings of the Privy Council (ed. Nicholas), vol. VI., pp. 234, 240.

A year later he was placed on a commission of array for Warwickshire. Collins, p. 321.

³ Fortescue's *Governance of England*, Plummer's ed., p. 45, n. 3.

⁴ Pulling's *Order of the Coif*, pp. 41-43.

⁵ In this capacity he rode the northern circuit. Co. Lit., preface.

whether the Wars of the Roses had any effect upon the career of Littleton. The answer is that no effect is discernible.¹ By reason of the Wars of the Roses, Fortescue lost the Chief Justiceship of the King's Bench; but this was because Fortescue became a soldier. Fortescue, as his writings show, was a statesman rather than a lawyer. Littleton's mind, on the other hand, was distinctly lawyerlike, and his career is only one of many that show the ease with which a person standing aloof from faction could pursue the legal profession successfully even in the midst of those most troubled times. Yet law and politics were not wholly separable; and at least twice during the Wars of the Roses there were emergencies of decided interest to lawyers. One of these occurred when Richard, Duke of York, attempted to turn the title of Henry the Sixth into a question of law; and the other occurred when the triumph of the Yorkists, combined with the theory that the Lancastrians had been usurpers, created the doubt whether judicial and other official acts performed under authority derived from usurpers should be deemed valid or void.

The first of these emergencies arose in 1460, when Richard, Duke of York, presented in open Parliament

¹ In 1454, when Richard Duke of York became Protector, and again in 1461, when Edward the Fourth seized the throne, Littleton sued out a general pardon. Collins, p. 821. This does not indicate that Littleton had committed any offense, but probably that after the cautious custom of his time he protected himself against being accused of offenses really not committed.

his claim to the throne in the form of a contention that the right to the crown was like the title to real estate and that the right to the crown, if thus treated, belonged to him and not to Henry the Sixth. The essential problem, in truth, was whether this mode of looking at kingship was in accordance with the constitution; and this, according to the English system, was a question not of law but of history and statesmanship. Yet the Lords spiritual and temporal, as the contemporaneous record says, after consulting the King, "sent for the Kyngs Justices into the Parlement Chambre, to have their avis and Counsell in this behalf, and there delyvered to theym the writyng of the cleyme of the seid Duc, and in the Kyngs name gave theym straitely in commaundement, sadly to take avisament therin, and to serche and fynde all such objections as myght be leyde ayenst the same, in fortelyng of the Kynges right. Wherunto the same Justices . . . sciden, that they were the Kyngs Justices, and have to determyne such maters as com before theym in the lawe, betwene partie and partie, and in such maters as been betwene partie and partie they may not be of Counseill; and sith this mater was betwene the Kyng and the seid Duc of York as two parties, and also it hath not be accustumed to calle the Justices to Counseill in such maters, and in especiall the mater was so high, and touched the Kyngs high estate and regalie, which is above the lawe and passed therlernying, wherfore they durst not enter into eny com-

munication therof, for it perteyned to the Lordes of the Kyngs blode, and th' apparage of this his lond, to have communication and medle in such maters." This terminated the incident, so far as the judges were concerned; but from Littleton's point of view the interest of the transaction now increased, for then, it seems, there were only two King's Serjeants,¹ of whom Littleton was one, and the record continues thus: "And then the seid Lordes considering the answere of the said Juges, and entendyng to have the advice and good counseill of all the Kynges Counseillors, sent for all the Kyngs Sergeauntes and Attourney, and gave theym straight commaundement in the Kyngs name, that they sadly and avisely shuld serche and seke all such thinges as myght be best and strengest to be alegged for the Kynges availe, in objection and defetyng of the seid title and clayme of the seid Duc. Whereunto the seid Sergeauntes and Attourney . . . answered and seiden, that the seid mater was put unto the Kynges Justices; and howe . . . the same Justices seiden and declered to the seid Lordes, that the seid mater was soo high and of soo grete wight, that it passed their lernyng, and also they durst not entre eny communication in that matier, to yeve eny avyce or Counseill therin; and sith that the seid matier was soo high that it passed the lernyng of the Justices, it must nedes excede their lernyng, and also they durst not entre eny communication in thac

¹ Foss' Judges of England, vol. IV., p. 245.

matier. . . . To whom it was answered . . . that they myght not so be excused, for they were the Kynges particuler Counseillers, and therfore they had their fees and wages. And as to that the seid Sergeaunts and Attourney seiden, that they were the Kynges Counseillers in the lawe, in such things as were under his auctorite or by commission, but this mater was above his anctorite, wherein they myght not medle. . . . And it was answered agayn, that the Lordes would not hold them excused, but let the Kynges Highnes have knowleche what they seid." This closed the connection of the King's Serjeants with the transaction; and the Lords proceeded to make such objections to the Duke's claim as they themselves saw fit, and to listen to his answers, and then to make the famous and unsuccessful compromise to the effect that Henry the Sixth should have the crown for life, remainder over to Richard Duke of York in fee.¹

The other emergency arose in a few months; for in 1461 the House of York gained the throne. Edward the Fourth reappointed to the office of King's Serjeants both Littleton and his former associate, Billing, who later was Chief Justice of the King's Bench.² To these two men, either in their official capacity as the legal advisers of the Crown or in their personal capacity as the heads of the legal profession, probably must

¹ *Rotuli Parliamentorum*, vol. V., pp. 375-378.

² Lord Campbell's unfavorable account of Billing is wholly rejected in *Foss' Judges of England*, vol. IV., pp. 410-419.

be given—though to be sure there is no direct evidence—credit for the framing of the first statute of the Yorkists,¹—the important act to the effect that all judicial proceedings in the reigns of the Lancastrian kings, including fines and recoveries, should have full force, and that the patents of nobility made in those reigns should be confirmed, and that all privileges granted to cities and towns should have full strength, and, in short, that the Lancastrian kings, although from the Yorkist point of view mere usurpers, would be recognized as having been kings *de facto*, and that property rights and the like accruing in their reigns would be fully respected.

It was in the same year, 1461, that a purely legal question came before Littleton, when he was appointed the first-named member of a commission, composed of “Thomas Litilton, Thomas Bilyng, William Lacon, Sergeaunts of Lawe, and Henry Sotill, the Kyngs Attorney,” whose business was to report upon a controversy between the Bishop of Winchester and many tenants of one of the bishop’s manors as to the services due from the tenants, and more especially as to “all manere works and Custumes, claymed of theym to be due by reason of their Tenures to the seid Reverend Fadre, all tymes of the yere; and of all manere Custumes of certeyn Hennes and Corne, called by the name of Chirchetts; and of a summe of money claymed at two lawdayes in

¹ St. 1 E. IV. c. 1 (1461); *Rotuli Parliamentorum*, vol. V., pp. 463–475, 489–493.

the yere, called Tithyng peny, otherwise Tottyng peny; also of a summe of money called Custume pannage for Swyne beyng within the Lordship of Estmeone," and finally as to the contention of the tenants that they were freeholders and not copyholders.¹ Thus reappears Littleton's connection with land law, and particularly with tenures.

While he was King's Serjeant, Littleton, like other King's Serjeants, had much experience of a judicial nature. He was almost invariably named in commissions of the peace² for Worcestershire, Warwickshire, Shropshire, Yorkshire, Westmoreland, Cumberland, and Northumberland. He was a judge in the county palatine of Lancaster also.³ In 1465 he was on a special commission of oyer and terminer with the Earl of Warwick and others;⁴ and in February, 1466, he was named in the regular commission of assize for York, Northumberland, Cumberland, and Westmoreland.⁵ These last appointments indicated that he was in the line of promotion; and indeed this had been indicated earlier, for a letter written in January, 1464, says: "The two Chefe Juges and Maister Lyttleton arn awaytyng up on the Kyng, for the Kyng is purposed in to Gloucestershire, etc."⁶

¹ *Rotuli Parliamentorum*, vol. V., p. 476.

² *Calendar of Patent Rolls*, 1461-1467, pp. 561, 569-570, 574-577.

³ *Paston Letters*, Gairdner's ed., vol. III., p. 428.

⁴ *Calendar of Patent Rolls*, 1461-1467, pp. 489-491.

⁵ *Calendar of Patent Rolls*, 1461-1467, p. 477.

⁶ *Paston Letters*, Gairdner's ed., vol. II., pp. 144-145.

In 1466, on April 27, occurred the most important event in Littleton's professional career, for Edward the Fourth then made him a Judge of the Common Pleas.¹ Fortescue's account of the making of a judge, familiar though it may be, contains passages that can hardly be quoted too often. Fortescue says: "There are usually in the Court of Common Pleas five judges, six at the most; in the Court of King's Bench four, and sometimes five; when any one of them dies, resigns or is superseded, the King, with the advice of his Council makes choice of one of the serjeants at law, whom he constitutes a judge by his letters patents, in the room of the judge so deceased, resigning, or superseded; which done, the Lord High Chancellor of England shall come into the court where such vacancy is; bringing in his hand the said letters patents, sitting on the bench, together with the judges of the court, he introduces the serjeant who is so appointed to be a judge; to whom, in open court, he shall notify the King's pleasure concerning his succession to the vacant office and shall cause to be read in public the said letters patents: after which, the Master of the Rolls shall read to him the oath of office; when he is duly sworn into his said office, the

¹ "By King by word of mouth." Calendar of Patent Rolls, 1461-1467, p. 515. His compensation was fixed at one hundred and ten marks annually, with an allowance for a furred robe at Christmas and for a linen robe at Pentecost. *Ib.* p. 516; Rymer's *Fœdera*, vol. XI., p. 566. These were the usual emoluments of a judge of the King's Bench or of the Common Pleas. Dugdale's *Origines Juridicales*, second ed., chap. XL.

Chancellor shall give into his hands the King's letters patents, and the Lord Chief Justice of the court shall assign him his place where he is to sit, and makes him sit down in it. . . . The judge, amongst other parts of his oath, is to swear, that he shall do equal law and execution of right to all the King's subjects, rich and poor, without having regard to any person. Neither shall he delay any person of common right, for the letters of the King, or of any other person, nor for any other cause, though the King by his express directions, or personal commands, should endeavor to influence and persuade the contrary. He shall also swear, that he shall not take by himself, or by any other, privily, ne · apart, any gift or reward of gold, or of silver, nor of · any other thing, the which might turn him to profit, unless it be meat or drink, and that of little value, of any man that shall have any plea, or process, hanging before him, and that he shall take no fees, as long as he be Justice, nor robe of any person, great or small, in any case, but of the King himself. You are to know, moreover, that the judge so created is not to make any solemn entertainment, or be at any extraordinary expense upon his accession to his office and dignity; because it is no degree in law, but only an office and a branch of magistracy, determinable on the King's good pleasure. . . . The judges of England do not sit in the King's courts above three hours in the day, that is, from eight in the morning till eleven. The courts are not

open in the afternoon. . . . The judges when they have taken their refreshments spend the rest of the day in the study of the laws, reading of the Holy Scriptures, and other innocent amusements, at their pleasure: it seems rather a life of contemplation than of much action: their time is spent in this manner, free from care and worldly avocations.”¹

Before Littleton's death there were two changes in the crown, each of them due to the strange vicissitudes of the Wars of the Roses; but Littleton's position on the Common Bench was permanent. In 1470, when Edward the Fourth was displaced and Henry the Sixth was restored, new patents were given to all the judges of this court, and also of the King's Bench,² and, although in 1471, when Edward the Fourth displaced Henry the Sixth permanently, a slight change was made in the membership of the courts, Littleton was one of the judges retaining place.³ The Wars of the Roses, in fact, although every judge held during royal pleas-

¹ Fortescue *De Laudibus Angliae*, chap. LI., Gregor's translation.

This oath of the judges was partly based upon St. 20 E. III. cap. 1 (1346).

A representation of the Court of Common Pleas, in colors, from a manuscript of the time of Henry the Sixth, is given in Pulling's Order of the Coif, frontispiece. A similar representation of the Court of King's Bench is given in Green's Short History of the English People, illustrated ed., vol. II., p. 564.

² Oct. 9, 1470. The Court of Common Pleas then consisted of Danby, C.J., Moyle, Needham, Choke, Littleton, and Yonge. Calendar of Patent Rolls, 1467-1477, p. 229.

³ June 17, 1471. Calendar of Patent Rolls, 1467-1477, p. 258.

ure and theoretically was *functus officio* upon a change of reign, had little effect upon the composition of the bench; and, indeed, even the actual sittings of the courts were disarranged but slightly.

During Littleton's service as a Judge of the Common Pleas he was appointed, like the other judges, upon commissions of oyer and terminer and of the peace in almost every county of England; but the greater part of his service of this sort was performed in Worcestershire, and the counties to the west and the north.¹ There were also appointments upon other commissions of no great importance, and two appointments upon Parliamentary commissions to try petitions from one of the wrecks of the English possessions in France—Gascony.²

In those days of bad roads, service on commissions of oyer and terminer and of the peace involved many days of social intercourse with judges and lawyers, and consequently many days of legal discussion. Some of the subjects thus discussed can be identified even at this late day; for the most important cases went to the King's Bench and the Common Pleas, and are now embalmed in the Year Books.

In the fifteen years of Littleton's service in the Common Pleas, the Year Books present a considerable number of cases that can be read with interest even now.

¹ Calendar of Patent Rolls, 1461-1467, and 1467-1477, *passim*.

² *Rotuli Parliamentorum*, vol. V., p. 571 (1467), vol. VI., p. 8 (1472).

Among these are: a case on excuses for trespass;¹ a case on pleading tender;² a case on the husband's power to bring an action for rent when husband and wife joined in the lease;³ a case on both the disabilities of a married woman and the rights of a *cestui que use*,⁴ a case establishing the copyholder's power to maintain trespass against his lord and marking the final development of the copyholder's interest into a full-fledged right;⁵ a case illustrating the ancient function of jurymen as witnesses and showing that, when it was attempted to attaint a jury for a false verdict, the falsity of the verdict could not be proved by new evidence;⁶ a case on the duty of a feoffee to uses;⁷ a case permitting a bailee to maintain trespass;⁸ cases on a servant's power to subject his master to liabilities in contract and in tort;⁹ a case on the right to go upon land for the purpose of making fortifications;¹⁰ a case on a deed absolute given as a security;¹¹ a case on infancy and abatement of

¹ Y. B. 6 E. IV. 7, pl. 18 (1466).

² Y. B. 7 E. IV. 3, pl. 8, and 4, pl. 10 (1467).

³ Y. B. 7 E. IV. 5, pl. 16 (1467).

⁴ Y. B. 7 E. IV. 14, pl. 8 (1467).

⁵ Y. B. 7 E. IV. 18, pl. 16 (1467).

⁶ Y. B. 7 E. IV. 29, pl. 14 (1467-8).

⁷ Y. B. 7 E. IV. 29, pl. 15 (1467-8).

⁸ Y. B. 8 E. IV. 6, pl. 5 (1468). See also Y. B. 9 E. IV. 83, pl. 9 (1469), especially Littleton's opinion; and Y. B. 10 E. IV. 1, pl. 1 (1470).

⁹ Y. B. 8 E. IV. 9, pl. 9 (1469), especially Pigot's argument at 11 a—11 b; and Y. B. 11 E. IV. 6, pl. 10 (1471).

¹⁰ Y. B. 8 E. IV. 23, pl. 41 (1468).

¹¹ Y. B. 9 E. IV. 25, pl. 34 (1469).

nuisance;¹ the famous case called *Taltarum's*, whereby it was settled that a common recovery can turn an estate tail into a fee simple even against remaindermen and reversioners;² a case on theft by a carrier and on the right of an alien merchant to sue in Chancery and to have his rights determined "according to the law of nature, which is called by some Law Merchant, which is law universal through all the world;"³ a case describing *peine forte et dure*;⁴ a case on a sale of goods for cash;⁵ cases on detriment as a consideration and on the jurisdiction of ecclesiastical courts when the consideration is marriage;⁶ a case on justification of trespass by necessity.⁷ It would be easy to cite other interesting cases from the Year Books of Littleton's day; but these few, most of which were in the Common Pleas, are quite enough to indicate that, although undoubtedly those were times when the best of men believed in witchcraft and in torture, the law was already an intricate and growing science, and service on the bench distinctly tended toward developing accuracy of thought and of statement. Further, as the Common Bench was the court that made a specialty of the law of real property,

¹ Y. B. 9 E. IV. 34, pl. 10 (1469).

² Y. B. 12 E. IV. 19, pl. 25 (1472).

³ Y. B. 13 E. IV. 9, pl. 5 (1473).

⁴ Y. B. 14 E. IV. 8, pl. 17 (1474).

⁵ Y. B. 17 E. IV. 1, pl. 2 (1477).

⁶ Y. B. 17 E. IV. 4, pl. 4 (1477); Y. B. 19 E. IV. 10, pl. 18 (1479-80).

⁷ Y. B. 20 E. IV. 10, pl. 10 (1480).

it is easy to see that to Littleton this judicial career was of special value as a preparation for writing the *Tenures*.

A judgeship was, as Fortescue says, "rather a life of contemplation than of action," and "free from care and worldly avocations." Yet Littleton's years as judge had at least one event not promised by such a description as this. In 1475¹ he received a mark of the royal favor by being brought in to add distinction to a brilliant ceremony which then was picturesque and which now seems both picturesque and pathetic. Nicolas, the historian of the Order of the Bath, after describing certain early admissions to that order, says: "The next creation was in 1475, when the Prince of Wales and Duke of York, the two sons of King Edward the Fourth, received the honours of chivalry, on which occasion . . . many other of the young nobility, together with the Chief Justice of the King's Bench, and the learned Judge Littleton, were made Knights of the Bath."² The historian goes on to describe the details of the instituting of a Knight of the Bath; but the modern reader does not need those details, gorgeous though they be, to fix his mind upon the pageant of that particular day; for when the venerable Littleton was made a

¹ April 18. Stow's *Annals*, 1631 ed., pp. 418-419; Anstis' *Knighthood of the Bath*, pp. 51-52, and appendix, No. LI.

² Nicolas' *Orders of British Knighthood*, vol. III., *History of the Order of the Bath*, p. 17. See Anstis' *Knighthood of the Bath*, pp. 51-52, and appendix, No. LI.

Knight of the Bath the two princes who were similarly honored were children who now are among the most conspicuous figures in history: one of them was then five years old, and the other was three; and eight years later the two were smothered in the Tower.

Littleton remained upon the bench until his death. He began to make preparations for death as early as 1479. In that year he made a conveyance of some of his property in trust for the uses to be declared in his will,¹ as was necessary because the statute of Wills had not yet been adopted.² His will is dated August 22, 1481. According to the inscription upon his tomb he died the next day. This inscription says: "Hic jacet corpus Thome Littleton de Frankly militis de Balneo et unius Iusticiarorum de communi banco qui obiit 23 die Augusti a. 1481." The present inscription is a restoration,³ but the same date is given by Coke,⁴ in whose day the original inscription, upon a brass said to have disappeared at the time of the wars between the Cavaliers and the Roundheads, was probably in existence. There

¹ Jeayes, No. 412. There may be some connection between this transaction and the great pestilence that prevailed in London and elsewhere for fourteen months, beginning in the latter part of September, 1478. Stow's Annals. 1631 ed., p. 431. It is said that, "fifteene yeares warre past consumed not the third part of the people, that onelie foure moneths miserablie and piti-fullie dispatched and brought to their graves." Holinshed's Chronicles. 1809 ed., vol. III., p. 346.

² St. 32 H. VIII., cap. 1. (1540).

³ Collins, p. 223.

⁴ Co. Lit., preface.

are some difficulties surrounding the date; but there is no reason for rejecting the statement that Littleton died on August 23, 1481.¹

The tomb is in Worcester Cathedral. It is an altar tomb, of white marble. It stands against the south wall of the nave, directly opposite the door now used as the ordinary entrance. About two hundred feet to the east is the tomb of King John, celebrated as presenting the

¹ According to Y. B. 21 E. IV. 10. pl. 1 (1481), Littleton sat once as a judge in November, 1481. This difficulty is not serious. In the Year Books it is not uncommon to find cases misplaced.

The evidence for 1481, in addition to the points noticed in the text, is well-nigh conclusive. In the counties in which Littleton was habitually of the commission of the peace he appears in commissions appointed Feb. 11 and May 28, 1481, and no later, although commissions were appointed for the same counties soon afterwards, e. g. Oct. 7 and Oct. 25, 1481; and, besides, on Apr. 16, 1481, he was appointed for the last time on a commission of oyer and terminer. Calendar of Patent Rolls, 1476-1485, pp. 289, 557, 560. The abstract of inquisitions *post mortem* gives the inquisition as in 21 E. IV., which regnal year closed Mar. 4, 1481-2. *Calendarium Inquisitionum post Mortem*, vol. IV., p. 407, No. 55. The MS. pedigree at Hagley Hall gives a copy of the full inquisition for Staffordshire, which says "*quod pdict. Tho. Littleton obiit 23 die Augusti ultimo predicto*" and is dated Oct. 16, 21 E. IV. (1481). The patent of Littleton's successor on the Common Bench, John Catesby, is dated Nov. 20, 1481. Calendar of Patent Rolls, 1476-1485, p. 288. Dugdale's *Origines Juridicales*, second ed., *Chronica Series*, p. 72, gives the date of Catesby's appointment as 1482; but this is explained by Dugdale's habit of treating the regnal year as beginning on the first day of January next after the day on which the regnal year legally began; and Dugdale at this very place gives Catesby's appointment as 20 Nov. 21 E. IV., which would be November, 1481, and agrees with Foss' *Lives of the Judges*, vol. IV., pp. 392, 417.

earliest monumental effigy of an English king. In other parts of the Cathedral are tombs of Crusaders and of early bishops, and curious carvings from an early day. These tombs and carvings and the great interior itself and the adjoining cloisters and the monastery of which only part remains—all these existed in Littleton's time and were doubtless known to him from childhood. Littleton himself chose this as his burial place; and he himself prepared this tomb.

Littleton's will has disappeared; but as it was admitted to probate in the Consistory Court of Canterbury, the record is preserved in Somerset House, London.¹ The will throws such an interesting light upon the fifteenth century, and especially upon Littleton himself, that it deserves to be read from beginning to end. It is as follows:—

“In the name of God, Amen. I, Thomas Lyttelton, knight, oon of the King's justice of the common place,² make my testament, and notifie my wille, in the manner and forme that followeth. First, I bequeth my soule to Almighty God, Fader, Sonne, and Hollye Ghost, three Persons and oon God, and our Lorde, maker of heven and erth, and of all the worlde;

¹ In Index to Wills Proved in the Prerogative Court of Canterbury, 1383–1558, vol. II., p. 349, the will is thus described:—“1481. Lytilton, sir Thomas, Knyght, Worcester; Warwick; Stafford, 3 Logge.”

² Even in Coke's time, as the translation adopted in Co. Lit. shows, this was a frequent mode of writing Common Pleas.

and to our most blessed Lady and Virgin Seynt Mary, moder of our Lord, and Jesu Christ, the only begotten sonne of our said Lorde God, the fader of heven, and to Saint Christopher, the which our said Lord did truste to bere on his shoudres, and to all the saints of heven: and my body to be berried in the tombe I lete make for me on the south side of the body of the cathedrall-church of the monasterē of our said blessed lady, of Worcester, under an image of St. Christopher,¹ in caas if I die in Worcestershire.² Also, I wulle and specially desire, that immediately after my decesse, myn executors find three gode preests for to singe iij. trentals for my soule, so that everish preest by himself sing oon trental, and that everish such preest have right sufficiently for his labor; also that myn executors find another gode preest for to sing for my soule, fyve masses, and rowe; the offyce of which beginneth, *Humiliavit semel ipsum Dominus Jesu Christus usque ad mortem*. Also I give one hundred shelings³ by yere to the priour and covent of the said monasterē, out of certain messuages and landes in the citē of Worcester, and to their successors, to singe at the altar, hallowed for the worship of St. George and St. Christopher, daily, at vii. in the morning, for the soules of my fader and moder, and for the soul of William Burley, my fader-in-lawe, and

¹ The image has disappeared.

² He had his wish, for according to tradition he died at Frankley Manor.

³ It should be kept in mind that money was then worth at least ten times its present value.

for the soule of Sir Philip Chetwin¹ and for all soules that I am most specially bounden to pray, and specially for myn own soule after my decesse; and that everish such monk sing everish Friday, a mass of *requiem*, and *ijd.* for his troubel to be paid him by the handes of the sexton; and I wulle that whenever the covent singe the annual *placebo* and *dirige* and *requiem* for my soule, and that of my ancestors, that they have *vis. viiid.* for thyr disport and recreation. I wulle that the said covent have *C. lib.* for performyn this dyvin servyce.

"Also I wulle, that the feoffees to myn use, of and in the halfyndele of the manor of Baxterley and Bentley, in Warwickshire, and in Moselë, in the lordship of Kingsnorton, and in Stone-besyde-Keddermyster, in Worcestershire, make a sure estate unto Richard Lyttelton,² my sonne, and to the heirs of his bodie, with all

¹ The first husband of his wife.

² The second son, for whom the treatise was written. The date of his birth is unknown. In 1479 he was named by his father as one of the grantees of certain lands in trust for purposes to be named in his father's will. Jeayes, No. 412. He was named as an executor in this will, and the record of the will shows that he qualified as such. In 1503 he was a justiciar in Staffordshire. Rymer's *Fœdera*, vol. XIII., p. 87. In 1504 he was placed upon a Parliamentary commission. *Rotuli Parliamentorum*, vol. VI., p. 540. In 1505 he was one of the three governors of the Inner Temple, being in fact the first governor named in the earliest extant record of the society. Calendar of Inner Temple Records, vol. I., p. 1. He last appears in the records of the society in 1516; and in 1517 another member is "assigned a chamber where Littilton lay." and in 1518 his son Edward "is assigned the chamber where his father lay." *Ib.* pp. 87, 40-41. His present representative, in the female line, is Lord Hatherton.

chartours, muniments, and evidences concernyng the same.

“Also I wulle, that he have the reversion of the manor of Molston-besyde-Clybery, in the county of Shrewsbury. Also I wulle, that my said sonne Richard have all my state, title, and interest that I have in a messuage in the parish of St. Sepulchre’s of London, on the north syde of the saide church,¹ which I holde of the Abbot of Leicester for term of yeres. Also I wulle, that the feoffees to myn use of and in the manor of Spechley, in Worcestershire, make a sure estate to my sonne Thomas Lyttelton² and the heirs of his body, with all chartours, &c., concernyng the same, and all other lands, rents, reversions and services that I have in Spechley, Cuddely, Bradicot, and Whitelady Aston, with the lands and tenements in Weddesbury in com’ Stafford.

“I wulle, that my wyf have a bason of silver, in the myddes whereof been myn arms, and an ewer of silver, two great salt-salers, and a kever, weying 93 ounces and $\frac{1}{2}$; a standyng plaine gilt peece, with a plaine gilt kover, weying 24 ounces and $\frac{1}{2}$; six bolles of silver, in the

¹ This was near the Inns of Court. Newgate prison, and Smithfield, which last was then the place for trials by combat. Stow’s Survey of London, Thoms’ ed., pp. 15-16, 148. The church is to-day interesting chiefly because it contains the tomb of Captain John Smith of Virginia.

² His youngest son, the ancestor of the Sir Edward Littleton who sat in Parliament with Sir Edward Coke, became Chief Justice of the Common Pleas and Lord Keeper, and by Charles I. was made a peer with the title of Baron Littleton of Munslow.

myddes of which been enamelled, for her using six moneths of the yere. A standing peece with kever weying 19 ounces and $\frac{1}{2}$. Two peeces of silver, one covering another, the which I occupie at London; a powder boxe of silver; a paxe borde; two cruetts and a sakering bell, all of silver. Also I wulle, that William Lyttelton¹ my sonne and heire shall have a depe washing-bason of silver weying 41 ounces, and two salt-salers of silver, with a kever to oon of them, weying 31 ounces and $\frac{1}{2}$, with another peece all over gilt in the myddes of which be iiij. eagles, a kover, weying 33 ounces; also a lowe peece of silver, with a kover, embossed in the likeness of roses, weying 29 ounces and $\frac{1}{2}$: also he shall have a dosein of my best spones. Also I wulle that my sonne, Richard, have two littel gilt salt-salers, with gilt cover to oon, now at London; also oon littel

¹ Authorities differ as to the date of his death. It was Nov. 8, 1506, according to Nash's Collections for the History of Worcestershire, vol. I., p. 493; but it was 1507 according to the pedigree opposite that page. It was December, 1507, and his age was sixty-five, according to Collins, p. 831, and also according to the MS. pedigree at Hagley Hall. The authorities agree that he was buried in the abbey at Halesowen. John, his son and heir, married "Elizabeth, the daughter and coheir of Sir Gilbert Talbot, of Grafton, in com. Wigorn, by Anne, his wife, the daughter and coheir of Sir William Paston, by Anne, his wife, third sister and coheir to Edmund Beaufort, Duke of Somerset, grandson of John of Gaunt, Duke of Lancaster: in right of whom Lyttelton and his posterity have lawfully quartered the arms of France and England, within a bordure goboné; and likewise all the arms and quarterings of Talbot and Paston." Collins, pp. 831-832.

The present heir is the Right Hon. Charles George Lyttelton, Viscount Cobham, Baron Lyttelton, Baron Westcote.

standyng peece, with a gilt kover, which hath at the foote a crown, and another on the kover, weying 22 ounces; also a standyng gilt nutt, and the best dosein of the second sort of my spones. Also I wulle, that Thomas Lyttelton my sonne have two salt-salers of silver weying 27 ounces; a standyng peece weying 21 ounces gilt and myn arms in the myddes of the same; also a boll of silver embossed with gold bosses outward, weying 11 ounces and three quarters; also he shall have a dosein spones of the third sorte.

“Also I bequeth my gode littel mass book and gode vestment with the apparyl to an auter of the same sorte of vestments which were my moder’s, and also a gilt chalës, I geve them to the blessed Trinitë, to the use and occupation of my chapel of Frankley in honour of our said most blessyd Trinitë; inasmuch as the said chapel of the blessyd Trinitë and an aulter thereof is halowed in the worship of the said blessyd Trinitë, for to have masse songen there on Trinitë Sunday and other high festivals and other days to the pleasure and honour of our said most blessyd Trinitë. I wulle, that a bigger cofer and locke and key be provyded for the safe keping of these vestments and chalës, within the chapel of Frankley; and the Lord of Frankley for the time being have the keping of the said key by himself, or som true and faithful person, so that he se that the saide masse book, vestment, chalës, and apparyl be surely kept, as he wull answer to the blessed Trinitë. Also I

wulle, that my great antiphoner be ever more had and surely kept in worship of God and St. Leonard to the use and occupation of and for the chapel church of St. Leonard, of Frankley.

“Also I wulle, that all my utensils of myn household, except silver plate, as beds, matraces, blanquetts, brushes, tables, all pots and chaldrons, and all such things that longith to my kechyn, after the thyrd part geven to my wyf, be equally devided between my three sonnes.

“Whereas I have made certaigne feoffees of my manour of Tixhale, in Staffordshir, for terme of the lif to my wif, the which manour she had a jointour for terme of her lif, with me, neverthelater my wille is, that my said wif do not hereafter trouble, vex, ne disturbe my wille and ordenance that I have and will mak of and in or for certaigne lands and tenements within the citē of Worcester; now my will and ordenance is, that she shall have the saide manour of Tixhale, with the reveniz thereof, during her lif, or else that the profitts thereof shall be taken and disposed in alms deeds for my soul by myn executor or by such other as I wulle thereto assignee, during her lif.

“I wull that my three sonnes and Sr. Xtopher Goldsmyth, parson of Bromsgrove, Sr. Robert Bank, parson of Enfield, and Robert Oxclyve, be myn executors; that the three first have *xx.lib.* in money apeece, toward their increce and profit, the latter *v.* marks each

of money, trusting in them that they wull do their diligent labor to se that my will be performed; the which as they know wele the performyng thereof in godely hast and tym, that shall be to the hasty remedie of my soule, and the long tarying thereof is to the retardation of the meritts of my soule: wherefore I wull that everych of my said sonnes to whom my grete specyal trust is, as kind nature wull, for to performe and execute my will aforesaid.

“I wulle that my wyf have my best plough, and all apparyl thereto, and ten of my best plough oxen, and my best waine; and that William Lyttelton have my second best waine, two ploughs, and ten oxen. Also I wulle and specially desire that all the money, debts, goods and catells that be myn at tym of my deth, over and above the cost and expensys of myn exequies and funeral, and over that that is bequethed by me in my lif, be sold and disposed for my soule, in alms and charitable deeds, that may be most profitable and merit to my soule. Also I wulle that all my beests and quick cattel, not afore bequethed, after myn exequies and funeral, be sold by myn executors and to be disposed as they think most expedient for my soule.

“I wulle and bequeth to the abbott and covent of Hales Oweyn, a boke of myn called *Catholicon*, to theyr own use for ever; and another boke of myn, wherein is contaigned the *Constitutions Provincial*, and *De gestis Romanorum*, and other treatis therein, which I wulle be laid and bounded with an yron chayn in some con-

venient parte within the said church at my costs, so that all preests and others may se and rede it whenne it plesith them. Also I wulle and bequeth to Sir Richard Howson, my preest, xl.s. in money, and the same to my servant Hawkins. Also I bequeth to Dame Jane, my wyf, xx.lib. in money in recompense of a silver bason, the which was somtym her husband's Sir Philip Chetwin's; to the said Dame Jane my best habyt, that is to saye, my gown, cloke, and hode. Also to my doughter Elyn my second best habyt, in lyke forme. Also to Alice my second doughter my third best habyt, in lyke forme. Also I bequeth my glosset-saulter to the priorie of Worcester. Also I bequeth a boke called *Fasiculus Morum* to the church at Enfield. Also I bequeth a boke called *Medulla Grammatica*¹ to the church of Kingsnorton. Also I wulle that my grete English boke² be

¹ The books whose titles are given in the will are thus described by J. M. Rigg, Esq., of Lincoln's Inn, in the Dictionary of National Biography, vol. XXXIII., p. 874: "'Catholicon' (i.e. the English-Latin dictionary known as 'Catholicon Anglicum,' printed by the Camden Society in 1882), the 'Constitutions Provincial' (i.e. Lyndewode's 'Constitutiones Provinciales Ecclesiae Anglicanae,' printed by Wynkyn de Worde in 1490), the 'De Gestis Romanorum' (the well-known 'Gesta Romanorum'), . . . the 'Fasiculus (sic) Morum' (perhaps a copy of the Latin original of Jacques Le Grant's 'Livres des Bonnes Moeurs,' Paris, 1478, fol., of which Caxton in 1487, fol., is a translation), . . . the 'Medulla Grammatica' (more correctly 'Grammatica'), an English-Latin dictionary . . . (see *Catholicon Anglicum*, Camden Soc., Pref. x.)."

² What was this great English book? Not the Tenures. Even in manuscript the Tenures would not be large, as can be seen by examining the MSS. in the Cambridge University Library.

sold by myn executors, and the money thereof to be disposed for my soul.

"I bequeth to Thomas Lyttelton, my sonne, a little flatte peece of silver, with a kover, all over gilte. Also to Edward Lyttelton, my god-sonne, a little standing goblet of silver, with a kover to the same, all over gilte. And I wulle and specially desire my moost betrusted lord, my lord bishop of Worcester,¹ to be overseer of this my will, to be performed, as my moost special trust is in his gode lordship: in witness whereof, to this my will I have sett my seale, theese being witnesses, Sir

Nor could the Tenures be called English, for the work is written in Law French. That the subject of the Tenures is English law is irrelevant, for the testator was obviously thinking of the language—all the previous books being in Latin or being, like the one he had last mentioned, aids to translation into Latin.

Possibly this great English book was a MS. copy of Wycliffe's Bible. The Bible was then, as now, frequently called "The Book." Murray's New English Dictionary, *sub voc.* "Book;" Century Dictionary, *sub voc.* "Book." That Littleton probably had a copy of the Bible is shown by Fortescue's description of the life of a judge. See *ante*, p. xl. The value of a Bible in those days was about five marks. Paston Letters, Gairdner's ed., vol. II., p. 329.

Other possibilities are Caxton's editions of Chaucer or of the Chronicles of England.

A more probable explanation is that the great English book was a miscellaneous collection of manuscripts in English. Such collections were common and could hardly be designated by a title more specific than "great English book."

¹ John Alcock, later Bishop of Ely and founder of Jesus College, Cambridge. Dugdale's *Monasticon Anglicanum*, 1718 ed., p. 24; Britton's *Cathedral Antiquities*, vol. IV., Worcester, appendix, p. 7.

Richard Howson, priest, Roger Hawkyns, Thomas Parkess, and others.

“Written at Frankley, 22 August, the yere of our Lord Jesu Christ, MCCCCLXXXI.”¹

The property indicated by the will, large as it was, did not constitute the whole of Littleton's estate. The will does not mention the land that was to go to the heir. The inquisition *post mortem* shows that Littleton owned at least six manors—possibly more—besides a dozen other items, counting as one item twelve messuages in Lichfield.² Further, the books named in this will were certainly not the whole of Littleton's library; for the list contains no book on the English law—an omission explainable on the theory that such books,—that is to say, such manuscripts, for Caxton had had his printing press in England for only about four years, and there were no printed books on English law as yet,—had already been given to his son Richard. Even the will and the inquisition combined, although they show clearly enough that Littleton was prosperous, do not indicate what manner of man he was.

There used to be three portraits. One was upon a brass plate set in the top of the tomb. It disappeared in the wars of the Commonwealth; but it is described as representing a kneeling figure, with these words pro-

¹ Collins, pp. 324-328; Tomlins' *Lyttleton's Tenures*, introduction, xxxiii.-xxxvii.

² *Calendarium Inquisitionum post Mortem*, vol. IV., p. 407, No. 55; Collins, p. 328.

ceeding from the mouth: "*Fili Dei miserere mei.*"¹ Another portrait was in a window of St. Leonard's Church at Frankley, and represented a kneeling figure "in skarlett, with a coyfe on his head."² This is gone now, and so is a portrait in a window of the church at Halesowen. The well-known engraving,³ which first appeared in 1629, is vouched for by Coke as a "true portraiture." Probably it was based upon the portraits named. It is the only representation of Littleton having fair claim to authenticity.⁴ It depicts a

¹ Co. Lit., preface; Collins, p. 323. There is a pen and ink sketch of this figure in the MS. pedigree at Hagley Hall.

² Habington's Survey of Worcestershire, edited by Amphlett, vol. II., p. 101.

³ The engraving is the work of Robert Vaughan and is found in Co. Lit., 2d. ed., and several subsequent editions, although many copies lack it. It has been reproduced in Pulling's Order of the Coif, opposite p. 273. There is a small copy, well executed, by Thomas Cross. According to Walpole's Catalogue of Engravers, Vaughan and Cross were contemporaries.

⁴ The painting in the Inner Temple, of which there is a copy at Hagley Hall, dates apparently from the seventeenth century. It represents a figure in the judicial costume of the time of Coke, but not of the time of Littleton. It has been suggested that this was simply the result of using a wrong costume in composing a picture based upon the portraits then in existence. Report (by F. A. Inderwick and Leonard Field) on the Inner Temple Pictures of Judge Littleton and Sir Edward Coke, *passim*. The painting, however, is by such a skilful artist that it has actually been attributed to Van Dyck; and an artist of that class would be unlikely to make a serious mistake as to costume. The painting has long been called a portrait of Judge Littleton, and probably it represents Coke's contemporary, the Chief Justice of the Common Pleas and Lord Keeper of the Great Seal. See *ante*, p. I., n. 2.

kneeling figure, with the sentiment "*Ung Dieu et Ung Roy*;" and it conveys the impression that Littleton had a slim body, a small but shapely head, and regular features. This portrait differs little from many of the fifteenth century, presenting hardly more than a conventional face and figure in a judicial costume; and this was doubtless one reason for Coke's suggesting that any one wishing to learn the individual peculiarities of Littleton must read the *Tenures*.¹

The book is of uncertain date, but probably was written towards the close of Littleton's life.² It professes to have been written in order to aid Littleton's son Richard³ in his study of the law. To an anonymous tract, of uncertain date, entitled *The Old Tenures*,⁴ Littleton was indebted for the suggestion of the title by which his work was originally known—*The New Tenures*. There are two early manuscripts of Littleton's *Tenures in Law French*, one on vellum and one on paper; but although these were almost certainly written before Littleton's death, they appear not to be in his handwriting.⁵ The

¹ Co. Lit., preface.

² As sections 291 and 324 speak of chapters on *Tenant by Elegit* and *Tenant by Statute Merchant*, which in fact are not found, there is ground for Coke's belief that the work lacked final revision. Co. Lit., preface.

³ The known dates as to Richard throw little light upon the probable date of the book. See *ante*, p. xlix., n. 2.

⁴ *Old Tenures* may be found in Coke's *Law Tracts*, and in the eleventh and twelfth editions of Co. Lit.

⁵ These manuscripts are in the Library of the University of Cambridge. The handwriting, especially in its elaborate capi-

book was printed by Lettou and Machlinia, in 1481 or 1482, being one of the earliest books printed in London and the earliest treatise on the English law printed anywhere.¹ The second edition was printed about 1483, at London, by Machlinia. The third edition was printed about 1490, in France, at Rouen, by William le Tailleur. This last is often called the Rohan edition, and it is interesting because it was the oldest known to Coke and was printed at the same place and from the same type and about the same time as Stat-ham's Abridgment—a book that is sometimes erroneously called the earliest printed book of English law. The Tenures soon appeared in many editions that bear the names of well-known English printers—Pynson, Redman, Berthelet, Rastell, Myddylton, Smyth, Powel, Tottill, Yetsweirt, Wight, and the Company of Stationers. English translations began to appear early in the

talization at the beginning of sections and in the carefully uniform length of lines, indicates the workmanship of a copyist.

The vellum MS. begins in the midst of section 83 and stops in the midst of section 699. It abounds in abbreviations.

The paper MS. used to contain this memorandum, showing that it existed in 1490: "*Iste liber emptus fuit in cœmeterio Sti. Pauli. London, 27th die Julii anno regis E. 4ti. 20mo. 10s. 6d.*" Co. Lit., 19th ed., Butler's preface, p. xxv. The leaf bearing that memorandum is now gone. The MS. closes on folio 77 with: "*quando ratione probatur. Expliciunt tenz Dn. Litilton. Harvngton.*" It has wide margins and a few annotations.

¹ The *Abrigement des Statutes* was printed about the same time by the same printers. The British Museum has a volume in which the Tenures and the *Abrigement* are bound together, the former coming first.

sixteenth century,¹ coming from the same printers that still continued to produce editions in Law French. In 1581 William West, author of "Symboleography," divided the Law French text into sections numbered in the manner now used. Before 1628 the editions numbered more than seventy—most of them in Law French. Several of these editions were usually printed with wide margins for manuscript notes; and to-day every large library has copies containing annotations so voluminous as to indicate that it was not uncommon for a lawyer to use his copy of Littleton as a common-place book.

In 1628 appeared the first edition of Coke's First Part of the Institutes of the Laws of England, sometimes called The First Institute, but commonly called Coke upon Littleton.² Coke printed in parallel col-

¹ In the Cambridge University Library is a MS. translation that Sir K. E. Digby considers as probably not later than 1500. *Encyclopædia Britannica*, 9th ed., vol. XIV., p. 705.

The Harvard Law School has a MS. translation closing in the midst of section 444, not very ancient, but probably earlier than Co. Lit.

² In several ways Coke had been reminded of Littleton throughout his whole professional life. Both Littleton and Coke were of the Inner Temple. Each of them was recorder of Coventry. Littleton's grandson married a granddaughter of Sir William Paston, Judge of the Common Pleas; and not long afterwards Coke married his first wife, a member of the same Paston family. Nash's *Collections for the History of Worcestershire*, vol. I., p. 493; Johnson's *Life of Coke*, vol. I. pp. 65-67, vol. II. p. 353. Two of Littleton's descendants were implicated in the Gunpowder Plot; and they were successfully prosecuted by Coke as Attorney General. Nash's *Collections for the History of Worcestershire*, vol. I., p. 491; Habington's *Survey of Worcester-*

umns the Law French of the Tenures and a translation—probably not the work of his own hand,¹—and surrounded Littleton with a stupendous commentary which contains the gleanings of a peculiarly laborious life and covers almost the whole domain of English law. Coke upon Littleton, unrivalled among law books for vast and various learning, has a curious place in the general history of literature, for it presents the most conspicuous example of a masterpiece upon a masterpiece—much as if the plays of Shakespeare were entwined about the Canterbury Tales.

It is impossible to state with accuracy how many editions there have been of Coke upon Littleton and how many of Littleton alone; for the editions have been very numerous, and there have been many abridgments, rearrangements, revisions, and even versifications, some of which are not entitled to be called editions. Counting only such publications as reproduce the whole of the

shire, vol. I., introduction, p. 15. Others of Littleton's descendants were Coke's associates in the Inner Temple. Calendar of Inner Temple Records, vol. I., pp. 303, 322, 329, 409, 432, vol. II., pp. 95, 120. One of these last, Sir Edward Littleton, was with Coke in Parliament in the days of the Petition of Right, on Coke's death succeeded to the occupancy of Coke's old chambers in the Temple, and later became Chief Justice of the Common Pleas, Lord Keeper of the Great Seal, and a peer under the title of Baron Littleton of Munslow. *Ib.*, vol. II., p. 217.

¹ Although Co. Lit., preface, says: "We have left our author to speak his own language, and have translated him into English," the translation is from time to time criticised by Coke in a manner indicating that he did not feel fully responsible for it.

Tenures, the editions of Coke upon Littleton number about twenty-five and the other editions of Littleton number almost ninety. It would be easy to fill many pages with eulogies pronounced upon Littleton, and with somewhat questionable traditions that certain eminent lawyers used to read the whole of the Tenures on each Christmas; but these figures tell clearly enough the high place that was won by Littleton. It will suffice, then, to give two quotations—one a statement of fact, and the other a statement of opinion.

The statement of fact, showing how soon the Tenures gained recognition, is by William Rastell, barrister and publisher, who as early as 1534 said, in his preface to a collection of twelve law tracts: "How commodious and profitable unto gentilmen studentes of the law, be these thre bokes, that is to wit, Natura Brevium, The olde tenures, & the tenures of mayster Lyttylton, experience proveth and the bookes them selfe declare. For lyke as a chylde goyng to scole, fyrste lerneth his letters out of the a. b. c. : so they that entende the study of the law, do fyrste study these iii. bokes."

The statement of opinion is the celebrated eulogy in Coke's preface: "That which we have formerly written,¹ that this book is the ornament of the Common Law, and the most perfect and absolute work that ever was written in any human science: and in another place,

¹ 2 Co. Rep. 67a; 10 Co. Rep., preface, pp. xxviii.-xxx. See Co. Lit. 311a.

that which I affirmed and took upon me to maintain against all opposites whatsoever, that it is a work of as absolute perfection in his kind, and as free from error, as any book that I have known to be written of any human learning, shall to the diligent and observing reader of these Institutes be made manifest, and we by them (which is but a commentary upon him) be deemed to have fully satisfied that which we in former times have so confidently affirmed and assumed. . . . And albeit, our author in his three books cites not many authorities, yet he holdeth no opinion in any of them, but is proved and approved by these two faithful witnesses in matter of law—authority and reason. Certain it is, when he raiseth any question, and sheweth the reason on both sides, the latter opinion is his own, and is consonant to law. We have known many of his cases drawn in question, but never could find any judgment given against any of them. . . . Certain it is that there is never a period nor (for the most part) a word, nor an &c., but affordeth excellent matter of learning.”

Obviously eulogy could go no further and could come from no higher source. Nor has Littleton's reputation lessened with the lapse of time. It is true that his famous book is no longer used as a daily key to existing law; but its diminishing utility in practice has been more than balanced by its increasing value as a picture of the past. To the scholarly reader, indeed, this vener-

able classic is attractive from many points of view. Here the legal author finds an eminent example of one of the successful forms of treatise—a book devoid of literary ambition, free from speculations as to the past or the future, and exclusively devoted to giving in clear and accurate language, like an instantaneous photograph, the living law just as the writer saw it in operation about him. Here, again, the educator perceives one fruit of a system of educational and professional life which steeped the lawyer in law from his youth to his death—sending him early to an inn of court, calling upon him to dispute and lecture before young and old, setting him to argue constantly both in and out of court, inducing him to act frequently as *amicus curiae*, at last placing him upon the bench, and throughout the whole of his career, whether in London or on circuit, habitually causing him to leave the distractions of home and to live an intimate and almost monastic life with men whose thought and conversation dealt chiefly with law;—and here, too, the educator learns what manner of book it was that formed the introduction to legal education from a hundred years before the publication of Coke's Institutes until fifty years after the publication of Blackstone's Commentaries. Finally, here the historian gets a picture of the law at the interesting moment when from the middle ages were springing the beginnings of modern life, and reads one of the chief intellectual products in England of the

fifteenth century, and, if he is wise, discovers that this little book—at first glance strangely out of place in the Wars of the Roses—was a natural and necessary product of an age when, despite private and public warfare, or, more accurately, on account of it, the English people saw in law the only protection from oppression and anarchy. These are some of the reasons why the treatise on Tenures—even independently of the light thence derived by law students and practical lawyers as to the otherwise mysterious causes of present rules of law—still has a place in useful literature, and why, although Coke's superlatives, vibrant with the enthusiasm underlying much of the prose of the earlier half of the seventeenth century, would not be used by any writer of this twentieth century in eulogy of any book whatsoever, nevertheless it is hardly possible to name a legal author to whom praise is given to-day more freely than to Littleton.

II.

BIBLIOGRAPHY.

THE following list attempts to catalogue all the printed¹ editions of the Tenures.² In such an undertaking it is inevitable that there shall be omissions and errors. To reduce the defects to a minimum, in 1902 the editor visited many libraries that might be expected to contain copies of Littleton. The copies thus found are attributed to the proper libraries by abbreviations in parentheses.³ The editor has also inserted—though without the parentheses indicating personal examination—other editions whose existence is vouched for by good authority. In making the list,

¹ The MSS. are described *ante*, pp. lix-lxi, notes.

² The list does not include volumes that present Littleton in an abridged or amended form. A few of these volumes are the following: The Young Lawyer's *Vade Mecum*, containing part of Littleton in verse, 1796 (B. L. S., an imperfect copy); Hobbe's Familiar Exercises, 1831 (B. M.), and later editions; a revision by the editors of the Law Students' Magazine, 1846 (B. M.), and a second edition in 1854 (B. M.).

³ The abbreviations are thus explained:—

A. S., All Souls College, Oxford; B., Bodleian Library of the University of Oxford; B. L. S., Birmingham Law Society; B. M., British Museum; B. P. L., Boston Public Library, Boston, Mas-

editions heretofore uncatalogued were found; but it was also discovered that some editions heretofore supposed to exist were merely imaginary, cataloguers having made clerical errors in copying dates, or having said that an edition in Law French was in English or *vice versa*, or having confused Littleton's Tenures with the Old Tenures. The editor has good reason to suspect that he has not discovered all the editions; and, conversely, it is not improbable that some of the editions herein catalogued separately are from the same type, with mere alterations in the date of the title-page or of the colophon, and that consequently future investigators will make a few omissions in the list here given.

Each edition is catalogued in an abbreviated way. First is given the date, when indicated by the title-page or by the colophon. Next is given—except as to Coke upon Littleton and the editions containing a translation into modern French—the name of the publisher, when

sachusetts; B. S. L., Boston Social Law Library; C., Library of the University of Cambridge; G. I., Gray's Inn; H. C., Harvard College; H. L. S., Harvard Law School; I. L. S., Incorporated Law Society, London; I. T., Inner Temple; K., Mr. W. V. Kellen's private library, Boston, Massachusetts; L. C., Library of Congress; L. I., Lincoln's Inn; M. T., Middle Temple; S. J. C., St. John's College, Cambridge; T. C. C., Trinity College, Cambridge; T. H. C., Trinity Hall, Cambridge; U. C. L., University College, London; V. C., Viscount Cobham's private library, Hagley.

Many other libraries are known to contain copies of editions in this bibliography. For example, the John Rylands Library at Manchester has many editions, including the three earliest.

known; and it is to be understood that the place of publication was London, unless otherwise indicated. Next is given, within parentheses, an indication of the libraries in which the editor has seen copies. When the editor has seen no copy, the authority for inserting the edition is cited.¹

In Law French only.

No date. Letton and Machlinia. (B. M., three copies, one of them imperfect; C., three copies; K.) The British Museum Catalogue gives 1481 as the probable date. Sayle's *Early Printed Books in the Cambridge University Library*, vol. I., p. 19, gives 1482. The volume is a folio. The size of the printed page is 4 13-16 by 7½ inches. The type is a rough black-letter, resembling the formal manuscripts of the time. Chapters begin with an illuminated letter. Although there are no paragraphs, there is much use of a rude paragraph mark. Sentences begin with a capital. There are a few periods, and no other punctuation marks. There are many abbreviations. The first page is blank. The second page begins: "*Incipit tabula h libri.*" This table of contents is much like the one usually found at the end of the *Tenures*. It is divided into three books, numbered, and into chapters, unnumbered, with references to the folios on which the respec-

¹ Ames' *Typographical Antiquities* is cited as Ames, with a specification of the edition.

tive chapters begin, using for this reference the signature at the bottom of the folio. The third page begins: "*Tenant en fee simple est celuy.*" At the bottom of this page is the signature a i. The last page ends with this colophon: "*Expliciūt Tenores novelli Impssi p nos Iohez lettou & Willz | de machlinia i Civitate Londonia juxta eccaz oim sco.*" The foregoing is a description of the British Museum copy C. 12 i. 9. The British Museum copy 2190.1 is bound up with "*Abrigement des Statutes,*" an undated publication by the same printers.

No date. Machlinia. (B. M.; V. C.) The British Museum Catalogue gives 1483 as a doubtful date. The volume is a folio. The size of the printed page is 5 by 7½ inches. The type is a rough black-letter. Chapters begin with an illuminated letter, a small letter being printed to guide the illuminator. There are no paragraphs, but there is much use of a rude paragraph mark. There are a few periods, numerous virgils,¹ and no other punctuation. There are some abbreviations. The first page is blank. The second page begins: "*Incipit tabula hujus libri.*" The table numbers the books, except the first, and does not number the chapters. It refers to the chapters by folio, using the signature. The third page begins: "*Tenaunt en fee simple est celuy.*" The

¹ An account of the virgil and of the whole contemporaneous system of punctuation may be found in an extract from "*Ascensius Declynsons with the Playne Expositor,*" given in Johnson's *Typographia*, vol. I., pp. 300-301.

colophon is: "*Expliciunt Tenores novelli Impressi | per me Wilhelmû de machlinia in opulen | tissima Civitate Londoniae juxta pontê | qui vulgariter dicitur Flete brigge.*" This description is based upon the British Museum copy.

No date. William le Tailleur, Rouen. (B. M.; C.; I. T.) The British Museum Catalogue gives 1495 as a doubtful date; and Sayle's *Early Printed Books in the Cambridge University Library*, vol. I., p. 31, conjectures 1490. The volume is a folio. The size of the printed page is $4\frac{1}{2}$ by $7\frac{1}{2}$ inches. The type is a small black-letter, resembling modern manuscript, and apparently the same with which the same printer produced Statham's *Abridgment*. There are spaces for illuminating the initial letters of the chapters, but no letters to guide the illuminator. There is much use of a rough paragraph mark. Periods are common, but there is no other punctuation. There are many abbreviations. The first page has the monogram of Richard Pynson. The second page is blank. The third page begins: "*Tenaunt en fee simple est celuy.*" The colophon is: "*Expliciunt Tenores novelli Impressi per me | Wilhelmû le tailleur in opulentissima civitate | rothomagensi juxta prioratum sancti laudi ad | instantiam Richardi pynson.*" This Rouen or Rohan edition was the earliest known by Coke. The foregoing description is based upon the British Museum copy. The Cambridge University copy has on the first page the device

of William le Tailleur and on the second page the table of contents. The Inner Temple copy has neither table of contents nor device.

No date. No publisher's name. (B.) The Bodleian has simply a fragment containing the first four pages. The manuscript catalogue of the Bodleian attributes this edition to Pynson, before 1500. The first page contains a wood cut representing Henry VII. with three courtiers on either side of him. The second and third pages contain the table of contents, with spaces for illuminating initial letters. The fourth page is blank. In a letter to the editor, an owner who wishes not to be named describes an imperfect copy—lacking the last leaf only—that possibly belongs to this edition.

No date. Pynson. (B. M.; C.; L. I.) The British Museum Catalogue gives 1510 as a doubtful date. The title-page says "Leteltun teners newe correcte," and contains the Henry VII. group. The printed page is $5\frac{1}{4}$ by $8\frac{1}{8}$ inches. The text is in black-letter.

1516. Pynson. (B. M.; B.) The title-page says "Leteltun tenuris new correcte," and it contains a device that consists of a Tudor rose supported by two angels and surrounded with the motto "*Hec rosa virtutis de celo missa sereno eternum florens regia sceptram feret.*" Beneath the device is the royal coat of arms, with supporters. The second page contains the Henry VII. group.

No date. Pynson. (B. M.) The British Museum Catalogue gives 1518 as a doubtful date. Littleton is preceded by a copy of the Old Tenures. Littleton begins with a page containing the Henry VII. group and no words. The size of the printed page is as in the undated Pynson attributed to 1510. The volume is a folio, and the last leaf is lvii.

1525. Pynson. (B.; L. I.) The volume closes with the publisher's invective against his rival, Redman, which is reprinted in Ames, 1749 ed., p. 488, Herbert's ed., vol. I., pp. 274-275. The Lincoln's Inn copy lacks the last leaf.

1526. Pynson. Described in Ames, 1749 ed., p. 126, and Herbert's ed., vol. I., p. 275.

1528. Redman. (B. M.) This edition numbers the chapters consecutively from the beginning to the end of the volume.

1528. Pynson. Described in Ames, 1749 ed., p. 127, and Herbert's ed., vol. I., p. 281.

No date. Redman. (B. M.; C.; K.) The British Museum Catalogue gives 1530 as a doubtful date and describes the volume as an octavo. The title page says: "Lyttylton | tenures newly imprin- | ted." The title-page contains the royal arms. The text is printed in Roman type. The size of the page, excluding the running title, is 2 by 3½ inches. The colophon says: "Imprynted at London | by me Robert | Redman. | Cum gratia et privilegio | Regali.

1530. Berthelet. (B. M.; C.; B.)

1534. William Rastell. (B. M.; H. L. S.; B. S. L.; K.) This is in the volume sometimes termed Rastell's Twelve Law Tracts, containing *Natura Brevium*, Old Tenures, etc. Ames, 1749 ed., p. 182, says: "It contains 423 pages, and is the first I have observed to be paged."

1539. No publisher named in the imperfect copy described in Ames, Herbert's ed., vol. III., p. 1551. Possibly the edition was in English.

No date. Redman. (B. M., two copies; L. I.; L. C.) The British Museum Catalogue gives 1540 as a doubtful date and describes the volume as a folio. There are two columns to the page.

1541. Berthelet. (K.) The title-page says both 1541 and 1534; but 1534 is simply part of the printer's device.

1545. Myddylton. (B. M.).

1545. Smyth. Described in Ames, 1749 ed., p. 251, Herbert's ed., vol. II., p. 706, Dibdin's ed., vol. IV., p. 227. Described also in a letter to the editor from an owner who wishes not to be named.

1553. Powel. (B. M.)

1554. Tottel. (B. M.; B. L. S.) The title page is in English.

1557. Tottel. (B. M.; B.; U. C. L.; K.) The title-pages of the several copies differ somewhat, and so do the colophons; but the copies appear to belong to one edition. The differences are explained by the fact

that this edition was, as one of the title-pages says: "Compared with divers true wrytten copies, and purged of sondry cases, having in some places more then ye authour wrote, and lesse in other some." This purging—though really requisite—did not please the profession, as is indicated by the restoration of the spurious passages in subsequent editions; and the changes in the title-page may have been intended to render this feature of this edition less prominent.

1567. Tottil. (B. M.) The title-page calls attention to the restoration of the spurious passages, which are marked by being placed between devices commonly called flowers.

1569. Tottill. (B.; H. L. S.)

1572. Tottill. (B. M; T. C. C.)

1574. Tottyl. (H. L. S.; K.) The title-page says 1572, and the colophon 1574.

1577. Tottyl. (B. M., two copies; B.; L. I.; I. L. S.) The copies usually have wide margins and MS. notes.¹

1579. Tottyl. (B. M.; C.; H. L. S.; K.) This edition is commonly found with wide margins and MS. notes.

1581. Tottel. (B. M.) This is the earliest edition dividing the text into numbered sections according to the system now used. The numbering was by William West, author of "Symboleography."

¹ It is possible that about 1578 there was an edition by Thomas Vautrollier. See Ames, Herbert's ed., vol. II., pp. 777, 1070.

1583. Tottill. (B. M., two copies; B.; I. T.; H. L. S., two copies.) This is an edition commonly found with wide margins and MS. notes.

1585. Tottill. (T. H. C.)

1586. Tottill (V. C.) The title-page says 1585, and the colophon 1586.

1588. Tottell. (B. M.; B.; L. I., three copies; G. I.; H. C.) This is another edition commonly found with wide margins and MS. notes. One copy in Lincoln's Inn is interleaved and contains notes that are said to have been written by Lord Chancellor Clarendon.

1591. Tottell. (B. M., three copies; C.; B.; L. I.; B. L. S.; H. L. S.) The Bodleian, Lincoln's Inn, and Birmingham copies do not contain the name of the publisher.

1594. Charles Yetswert. (B. M.; K.) In this edition the sections of each chapter are numbered separately.

No date. Jane Yetswert. (U. C. L.) The sections are numbered as in the immediately preceding edition. The date should probably be 1597.

1599. Thomas Wight and Bonham Norton. (B. M.; H. L. S.) The sections of each chapter are numbered separately.

1604. Wight. (B. M.; B.; U. C. L.) This edition has wide margins. It restores the common mode of numbering the sections, as devised by West.

1608. *Companie of Stationers.* (B. M., three copies; L. I.; U. C. L.; H. L. S.)

1612. *Companie of Stationers.* (B. M., three copies; C.; T. C. C.; I. T.; M. T.; L. I.; H. L. S.; K., two copies.) This edition is sometimes found with wide margins and MS. notes.

1617. *Companie of Stationers.* (B. M., two copies; T. C. C.; B.; M. T.; K., two copies.)

1621. *Companie of Stationers.* (T. C. C.; I. T.; M. T.; H. C.; L. C., two copies.) One of the copies in the Library of Congress lacks the title-page.

1639. *Assigns of John More.* (B. M., two copies; B.; K.) *H.L.S.*

In Law French and Modern French.

1766. At Rouen, edited by Houïard, and entitled "*Anciennes Loix des François,*" two volumes. (B. M., two copies; I. T.; M. T.; B. L. S.; H. L. S.; H. C.) The British Museum has also an interleaved copy of the first volume, bound in five parts, containing Sir William Jones' MS. translation of the whole of Littleton, with a preface and a title-page (dated 1776). It is known that Sir William Jones intended to prepare an edition of the Tenures, but desisted in order not to compete with Hargrave's project for a new edition of Coke upon Littleton. Jones had just been admitted to the bar, was already known as a master of Persian and Arabic,

but had not yet become the founder of Sanscrit philology nor the author of "Bailments."

1779. At Rouen, second edition, by Hoiïard, of "Anciennes Loix des François," two volumes. (B. M.; C.; B.; L. I.; G. I.; H. L. S.)

*In English only.*¹

No date. Redman. (S. J. C.) The title-page says: "Lyttelton | tenures in | Englysshe." The title-page contains the royal coat of arms. The colophon says: "Imprynted at London | in Fletestrete, by me Robert | Redman, dwellynge at the | sygne of the George, | nexte to Saynt | Dunstones | church." This edition may be the one against which was directed the invective in Pynson's 1525 Law French edition.

No date. John Rastell. Described in Ames, 1749 ed., p. 148, Herbert's ed., vol. I., p. 342, Debbin's ed., vol. III., p. 109.

1528. John Rastell. Described in Ames, 1749 ed., p. 146, Herbert's ed., vol. I., p. 333, Debbin's ed., vol. III., p. 91. Possibly this edition was in Law French.

1538. Berthelet. (B. M.)

No date. Wyer. Described in Ames, 1749 ed., p. 157, Herbert's ed., vol. I., p. 376, Dibbin's ed., vol. III., p. 187.

¹ The recent editions of Co. Lit., beginning with the seventeenth, might properly be included in this part of the list.

No date. Petyt. (B. M.; T. C. C.; K.) The British Museum Catalogue gives 1544 as a doubtful date. The title-page says: "Lyttelton | tenures in En | glyshe." The title-page contains the royal arms, very rudely designed. The whole book is in black-letter. The colophon says: "Prynted at london in | paules church yearde at | the sygne of the may- | dens heed, by Tho- | mas Petyt."

1544. Myddylton. (B.)

1545. No publisher named. (S. J. C.) The title-page says: "Lyt|tilton | tenures | truely translated in | to englyshe | an. M. D. XL. V." The title is inclosed in an elaborate device of columns and symbolical figures, containing the date 1534. The publisher was probably Myddylton.

1546. No publisher named. Described in a letter to the editor from an owner who wishes to remain anonymous.

1548. Powell. (B. M.; C.) The Cambridge University copy lacks the last leaf. The title-page contains Myddylton's device.

1551. Powell. Described in Ames, Herbert's ed., vol. II., p. 737.

1556. Marshe. (B. M.)

1556. No publisher named. (K.) The text is in black-letter, poorly printed. The title-page is "Lyt- | tilton te- | nvres. | truly translated into | Englishe. | ? | Anno domini. | M. D. L. VI."

1556. Tottle. (B. M.)

No date. No name of publisher. (B. M.) The British Museum Catalogue gives 1560 as a doubtful date. The book is poorly printed in black-letter. The title-page is: "Little- | ton Tenures | in Englishe. | *Cum privilegio ad im- | primendum solum.*" The volume closes on folio 142, thus: "barre ye heire with- | out the war- | rante, etc. | Finis." Possibly a copy without a title-page, found in the library of George Browne, Esq., Troutbeck, Windermere, by Charles Sayle, Esq., of the Cambridge University Library, belongs to this edition.

1572. Tottyl. (B. L. S.)

1574. Tottyl. (K.)

1576. Tottyl. (L. I.; H. L. S.; K.)

1581. Tottel. (T. C. C.; T. H. C.)

1583. Totill. (H. L. S.; K.)

1586. Tottill. (B. M.; B.) In the Bodleian copy the name is spelled Tottle.

1593. Tottill. (K.) The title-page says 1592, and the colophon 1593.

1594. Charles Yetsweirt. (B. M.) (H. L. S.)

1597. Jane Yetsweirt. (B. M.)

1600. Wight. (B. M.; C.; I. L. S.)

1604. Wight. (B.; L. I.)

1608. Companie of Stationers. (S. J. C.; B.; H. L. S.)

1612. Companie of Stationers. (B. M.; H. C.)

1616. Companie of Stationers. (B. P. L.)
 1621. Companie of Stationers. (B. M.; K.)
 1627. Companie of Stationers. (B. M.; S. J. C.;
 B.; H. L. S.; K.)
 1656. Company of Stationers. (B. M.; S. J. C.;
 H. L. S.)
 1661. Company of Stationers. (H. L. S.; K.)
 1813. W. Clarke & Sons. (U. C. L.; H. L. S.,
 two copies; K.) This is the earliest edition in English
 having the sections numbered.
 1825. J. & W. T. Clarke. (H. L. S.)
 1825. Henry Butterworth. (B. M.; I. T.; K.)
 1829. Saunders & Bennings. (B. M.; C.; B.;
 I. T.; M. T.; L. I.; G. I.; U. C. L.; B. L. S.; H. L. S.;
 L. C.) This is an edition by Cary, with an anonymous
 commentary which antedates Coke.
 1831. J. & W. T. Clarke. (U. C. L.; H. L. S.)
 1845. V. & R. Stevens and G. S. Norton. (Bill.;
 B.; B. L. S.; H. L. S.; L. C.; K.)

*In both Law French and English.*¹

1671. John Streater, James Flesher, and Henry
 Twyford. (B. M.; L. I.; I. L. S.; U. C. L.; H. L. S.;
 K.)
 1841. S. Sweet. (B. M.; B.; A. S.; I. T.; M. T.;
 L. I.; U. C. L.; B. L. S.; H. L. S.; H. C.; L. C.; K.)

¹ To this part of the list might properly be added the earlier
 editions of Coke upon Littleton, closing with the sixteenth.

This edition was edited by T. E. Tomlins, and contains a revised Law French text and a revised translation.

*Coke upon Littleton.*¹

1628. First edition. (B. M., three copies; C.; B.; L. I.; H. L. S.) This edition regularly contains no portraits, but some of the copies have apparently been enlarged by the addition of portraits prepared for the second edition.

1629. Second edition. (B. M.; B.; L. I., two copies; I. L. S.; H. L. S.) This edition contains a portrait of Coke, dated 1629, and a portrait of Littleton.

1633. Third edition. (B. M.; B.; M. T.; G. I.; B. P. L.)

1639. Fourth edition. (C.; H. L. S.)

1656. Fifth edition. (B. M.; C.; H. L. S.) The British Museum copy has MS. notes by Hargrave.

1664. Sixth edition. (B. M.; U. C. L.; H. L. S.)

1670. Seventh edition. (B. M., four copies; U. C. L.; H. L. S.; H. C.) In this edition the portrait of Coke is dated 1670.

1670. Eighth edition. (B. M., three copies; C.; B. P. L.) The British Museum has also an incomplete copy that contains MS. notes by Hargrave.

¹ This list contains only such editions of *Coke upon Littleton* as can properly be termed editions of the *Tenures*. Consequently it omits the mere abridgments of Coke's commentary attributed to Davenport, Hawkins, and others, and also Coventry's 1880 edition, which omits a considerable part of both Coke and Littleton.

1684. Ninth edition. (B. M.; L. I.) In this edition appears a new portrait of Coke.

1703. Tenth edition. (B. M.)

1719. Eleventh edition. (B. M.; I. T.; M. T.; H. L. S.) This edition contains the Old Tenures.

1738. Twelfth edition. (B. M.; B.; H. L. S.) This edition contains the Old Tenures.

1788. Thirteenth edition. (B. M.; C.; B.; I. T.; I. L. S.; H. L. S., two copies.) This is the first edition containing the notes by Hargrave and Butler. It appeared in parts. Some copies, *e. g.*, the Incorporated Law Society copy and one of the Harvard Law School copies, contain a title-page prepared for the early parts and dated 1775. The British Museum has also an incomplete copy that contains MS. notes by Hargrave and announcements as to the inception and progress of the work.

1789. Fourteenth edition. (B. M.; G. I.; I. L. S.; U. C. L.; H. L. S.)

1791. Dublin reprint of fourteenth edition. (H. L. S.)

1794. Fifteenth edition, three volumes. (B. M.; C.; B.; L. I.; I. L. S.; U. C. L.; B. L. S.; H. L. S.; B. P. L.)

1809. Sixteenth edition, three volumes. (B. M.; I. L. S.; H. L. S.; B. P. L.)

1812. Philadelphia reprint, edited by Day, of the sixteenth edition, three volumes. (H. L. S.; L. C.; B.

P. L.) This is the last edition containing both Law French and English.

1817. Seventeenth edition, two volumes. (C.; B.; H. L. S.)

1818. Thomas' edition, three volumes. (B. M.; B.; I. T.; L. I.; I. L. S.; B. L. S.; H. L. S.) This edition rearranges both Littleton and Coke.

1823. Eighteenth edition, two volumes. (B. M.; C.; B.; H. L. S.; B. P. L.)

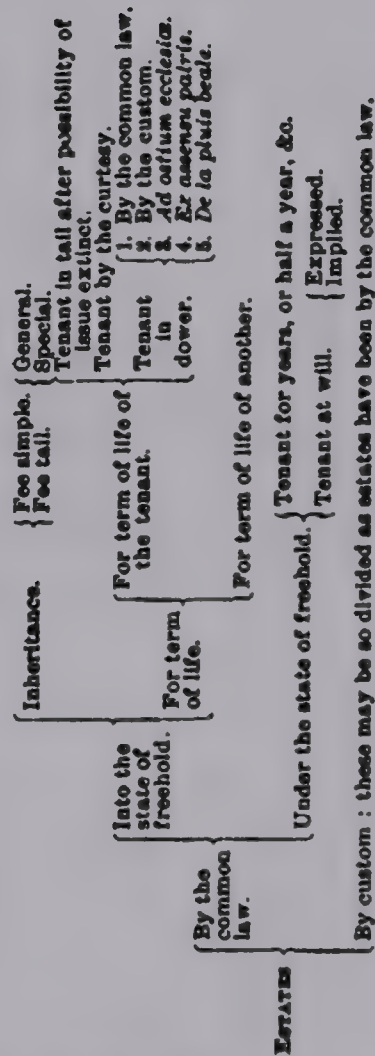
1827. Philadelphia reprint of Thomas' edition, three volumes. (L. C.)

1832. Nineteenth edition, two volumes. (I. T.; M. T.; L. I.; G. I.; B. L. S.; H. L. S.; H. C.)

1836. Philadelphia reprint of Thomas' edition, three volumes. Described in New York City Bar Association Catalogue.

1853. Philadelphia reprint, edited by Day, of nineteenth edition, two volumes. (H. C.)

A FIGURE OF THE DIVISION OF POSSESSIONS.¹



¹ This diagram is not the work of Littleton ; but, with changes from time to time, it has appeared in almost all editions.

THE TENURES.

BOOK THE FIRST.

CHAPTER I.

FEE SIMPLE.

§ 1. TENANT in fee simple is he which hath lands or tenements to hold to him and his heirs forever. And it is called in Latin *feodum*¹ *simplex*, for *feodum* is the same that inheritance is, and *simplex* is as much as to say, lawful or pure. And so *feodum simplex* signifies a lawful or pure inheritance. For if a man would purchase lands or tenements in fee simple, it behoveth him to have these words in his purchase, To have and to hold to him and to his heirs: for these words, his heirs, make the estate of inheritance. For if a man purchase lands by these words, To have and to hold to him for ever, or by these words, To have and to hold to him and his assigns for ever; in these two cases he hath but an estate for term of life, for that there lack these words, his heirs, which words only make an estate of inheritance in all feoffments and grants.

¹ In the earliest French edition, that of Lettou and Machlinia, this word is spelled "*feudum*."

§ 2. And if a man purchase land in fee simple and die without issue, he which is his next cousin collateral of the whole blood, how far so ever he be from him in degree, may inherit and have the land as heir to him.

§ 3. But if there be father and son, and the father hath a brother that is uncle to the son, and the son purchase land in fee simple, and die without issue, living his father, the uncle shall have the land as heir to the son, and not the father, yet the father is nearer of blood; because it is a maxim in law that inheritance may [lineally]¹ descend, but not ascend. Yet if the son in this case die without issue, and his uncle enter into the land as heir to the son, (as by law he ought,) and after² the uncle dieth without issue, living the father, the father shall have the land as heir to the uncle, and not as heir to his son, for that he cometh to the land by collateral descent, and not by lineal ascent.

§ 4. And in case where the son purchaseth land in fee simple, and dies without issue, they of his blood on the father's side shall inherit as heirs to him, before any of the blood on the mother's side: but, if he hath no heir on the part of his father, then the land shall descend to the heirs on the part of the mother.³ But, if a

¹ Throughout this edition brackets in the text indicate that according to the best French texts the inclosed words are spurious.

² *I. e.* afterwards.

³ In some of the later French texts there is here inserted the following passage:—

“And this was the opinion of all the justices. M. 12 E. IV. But it was there held, if land descend to a man on the part of his father, who dies without issue, that his next heir, on the part of

man marrieth an inheritrix of lands in fee simple, who hath issue a son, and die, and the son enter into the tenements, as son and heir to his mother, and after dies without issue, the heirs of the part of his mother ought to inherit, and not the heirs of the part of the father. And, if he hath no heir on the part of the mother, then the lord, of whom the land is holden, shall have the land by escheat. [In the same manner it is, if lands descend to the son of the part of the father, and he entereth, and afterwards dies without issue, this land shall descend to the heirs on the part of the father, and not to the heirs on the part of the mother. And if there be no heir of the part of the father, the lord of whom the land is holden, shall have the land by escheat.] And so see the diversity, where the son purchaseth lands or tenements in fee simple, and where he cometh to them by descent on the part of his mother, or on the part of his father.

§ 5. Also if there be three brethren, and the middle brother purchaseth lands in fee simple, and die without issue, the elder brother shall have the land by de-

his father, shall inherit to him, that is to wit, the next who is of the blood of the father on the part of the father of the father: and for default of such heir, those who are of the blood of the father on the part of the mother of the father, viz. the grandmother, shall inherit. And if there is no such heir on the part of the father, then the lord shall have the land by escheat."

Coke does not print this interpolation; and Hargrave and Butler's notes to Coke upon Littleton say of it: "But this passage is not in any edition prior to Redman's, and seems an addition to Littleton by another hand, and to be an opinion extracted from 12 E. IV. 14, pl. 12, which is indeed cited in the margin of Redman."

scent and not the younger, &c. And also if there be three brethren, and the youngest purchase lands in fee simple, and die without issue, the eldest brother shall have the land by descent and not the middle, for that the eldest is most worthy of blood.

§ 6. Also, it is to be understood, that none shall have land of fee simple by descent as heir to any man, unless he be his heir of the whole blood. For if a man hath issue two sons by divers venters, and the elder purchase lands in fee simple, and die without issue, the younger brother shall not have the land, but the uncle of the elder brother, or some other his next cousin shall have the same because the younger brother is but of half blood to the elder.

§ 7. And if a man hath issue a son and a daughter by one venter, and a son by another venter, and the son of the first venter purchase lands in fee and die without issue, the sister shall have the land by descent, as heir [to her brother,] and not the younger brother, for that the sister is of the whole blood of her elder brother.

§ 8. And also, where a man is seised of lands in fee simple, and hath issue a son and daughter by one venter, and a son by another venter, and die, and the eldest son enter, and die without issue, the daughter shall have the land, and not the younger son, yet the younger son is heir to the father, but not to his brother. But if the elder son doth not enter into the land after the death of his father, but die before any entry made by him, then

the younger brother may enter, and shall have the land as heir to his father. But where the elder son in the case aforesaid enters after the death of his father, and hath possession, there the sister shall have the land, because *possessio fratris de feodo simplici facit sororem esse hæredem*. But if there be two brothers by divers venters, and the elder is seised of land in fee, and die without issue, [and his uncle enter as next heir to him, who also dies without issue,] now the younger brother may have the land as heir to the uncle, for that he is of the whole blood to him, albeit he be but of the half blood to his elder brother.

§ 9. And it is to wit, that this word (*inheritance*) is not only intended where a man hath lands or tenements by descent of inheritage, but also every fee simple [or tail] which a man hath by his purchase may be said an inheritance, because his heirs may inherit him. For in a writ of right which a man bringeth of land that was of his own purchase, the writ shall say, *quam clamat esse jus et hæreditatem suam*. And so shall it be said in divers other writs which a man or woman bringeth of his own purchase, as appears by the Register.

§ 10. And of such things, whereof a man may have a manual occupation, possession, or receipt, as of lands, tenements, rents, and such like, there a man shall say in his count countant, and plea pleadant, that such a one was seised in his demesne as of fee. But of such things, which do not lie in such manual occupation, &c., as of

an advowson of a church and such like, there he shall say, that he was seised as of fee, and not in his demesne as of fee. And in Latin it is in one case, *quòd talis seisitus fuit in dominico suo ut de feodo*, and in the other case, *quòd talis seisitus fuit, &c., ut de feodo*.

§ 11. And note, that a man cannot have a more large or greater estate of¹ inheritance than fee simple.

§ 12. Also, purchase is called the possession of lands or tenements that a man hath by his deed or agreement, unto which possession he cometh not by title of descent from any of his ancestors, or of his cousins, but by his own deed.

¹ Instead of "of," the best French texts authorize "or."

CHAPTER II.

FEE TAIL.

§ 13. Tenant in fee tail is by force of the statute of Westminster II.,¹ *cap*, 1; for before the said statute, all inheritances were fee simple; for all the gifts which be specified in that statute were fee simple conditional at the common law, as appeareth by the rehearsal of the same statute. And now by this statute, tenant in tail is in two manners, that is to say, tenant in tail general, and tenant in tail special.

§ 14. Tenant in tail general, is where lands or tenements are given to a man, and to his heirs of his body begotten. In this case it is said general tail, because whatsoever woman, that such tenant taketh to wife, (if he hath many wives, and by every of them hath issue,) yet every one of these issues by possibility may inherit the tenements by force of the gift, because that every such issue is of his body engendered.

§ 15. In the same manner it is, where lands or tenements are given to a woman, and to the heirs of her body; albeit that she hath divers husbands, yet the issue,

¹ 13 E. I. (1285).

which she may have by every husband, may inherit as issue in tail by force of this gift; and therefore such gifts are called general tails.

§ 16. Tenant in tail special, is where lands or tenements are given to a man and to his wife, and to the heirs of their two bodies begotten. In this case none shall inherit by force of this gift, but those that be engendered between them two. And it is called especial tail, because if the wife die, and he taketh another wife, and have issue, the issue of the second wife shall not inherit by force of this gift, nor also the issue of the second husband, if the first husband die.

§ 17. In the same manner it is, where tenements are given by one man to another, with a wife (which is the daughter or cousin to the giver) in frankmarriage, the which gift hath an inheritance by these words (frankmarriage) annexed unto it, although it be not expressly said or rehearsed in the gift (that is to say) that the donees shall have the tenements to them and to their heirs between them two begotten. And this is called especial tail, because the issue of the second wife may not inherit.

§ 18. And note, that this word (*talliare*) is the same as to set to some certainty, or to limit to some certain inheritance. And for that it is limited and put in certain, what issue shall inherit by force of such gifts, and how long the inheritance shall endure, it is called in Latin, *feodum talliatum*, i. e. *hæreditas in quondam cer-*

titudinem limitata. For if tenant in general tail dieth without issue, the donor or his heirs may enter as in their reversion.

§ 19. In the same manner it is of the tenant in especial tail, etc. For in every gift in tail without more saying, the reversion of the fee simple is in the donor. And the donees and their issue shall do to the donor, and to his heirs, the like services as the donor doth to his lord next paramount, except the donees in frankmarriage, who shall hold quietly from all manner of service (unless it be for fealty) until the fourth degree is past, and after the fourth degree is past, the issue in the fifth degree, and so forth the other issues after him, shall hold of the donor or of his heirs as they hold over, as before is said.

§ 20. And the degrees in frankmarriage shall be accounted in this manner, viz. from the donor to the donees in frankmarriage the first degree, because the wife that is one of the donees ought to be daughter, sister, or other cousin to the donor; and from the donees unto their issue shall be accounted the second degree, and from their issue unto their issue the third degree, and so forth. And the reason is, because that after every such gift, the issues of the donor, and the issues of the donees after the fourth degree past of both parties in such form to be accounted, may, by the law of the holy church, intermarry. And that the donee in frankmarriage shall be said to be the first degree of the four

degrees, a man may see in a plea upon a writ of right of ward, P. 31 E. III., where the plaintiff pleadeth that his great grandfather was seised of certain lands, etc., and held the same of another by knight's service, etc., who gave the land to one Raphe Holland with his sister in frankmarriage, &c.

§ 21. And all these entails aforesaid be specified in the said statute of Westminster II. Also there be divers other estates in tail, though they be not by express words specified in the said statute, but they are taken by the equity of the same statute. As if lands be given to a man, and to his heirs males of his body begotten; in this case his issue male shall inherit, and the issue female shall never inherit, and yet in the other entails aforesaid it is otherwise.

§ 22. In the same manner it is, if lands or tenements be given to a man and to his heirs females of his body begotten; in this case his issue female shall inherit by force and form of the said gift, and not his issue male. For in such cases of gifts in tail, the will of the donor ought to be observed, who ought to inherit, and who not.

§ 23. And in case where lands or tenements be given to a man, and to the heirs males of his body, and he hath issue two sons, and dieth, and the eldest son enter as heir male, and hath issue a daughter, and dieth, his brother shall have the land, and not the daughter, for that the brother is heir male. But otherwise it is in the other entails, which are specified in the said statute.

§ 24. Also, if lands be given to a man and to the

heirs males of his body, and he hath issue a daughter, who hath issue a son, and dieth, and after the donee die; in this case, the son of the daughter shall not inherit by force of the entail; because whosoever shall inherit by force of a gift in tail made to the heirs males, ought to convey his descent wholly by the heirs males. Also in this case the donor may enter, for that the donee is dead without issue male in the law, insomuch as the issue of the daughter cannot convey to himself the descent by an heir male.

§ 25. In the same manner it is, where lands are given to a man and his wife, and to the heirs males of their two bodies begotten, &c.

§ 26. Also, if tenements be given to a man and to his wife, and to the heirs of the body of the man, in this case the husband hath an estate in general tail, and the wife but an estate for term of life.

§ 27. Also, if lands be given to the husband and wife, and to the heirs of the husband which he shall beget on the body of his wife, in this case the husband hath an estate in especial tail, and the wife but an estate for life.

§ 28. And if the gift be made to the husband and to his wife, and to the heirs of the body of the wife by the husband begotten, there the wife hath an estate in special tail, and the husband but for term of life. But if lands be given to the husband and the wife, and to the heirs which the husband shall beget on the body of the wife, in this case both of them have an estate tail, be-

cause this word (heirs) is not limited to the one more than to the other.¹

§ 29. Also, if land be given to a man and to his heirs which he shall beget on the body of his wife, in this case the husband hath an estate in especial tail, and the wife hath nothing.

§ 30. Also, if a man hath issue a son and dieth, and land is given to the son, and to the heirs of the body of his father begotten, this is a good entail, and yet the father was dead at the time of the gift. And there be many other estates in the tail, by the equity of the said statute, which be not here specified.

§ 31. But if a man give lands or tenements to another, to have and to hold to him and to his heirs males, or to his heirs females, he, to whom such a gift is made, hath a fee simple, because it is not limited by the gift, of what body the issue male or female shall be, and so it cannot in any wise be taken by the equity of the said statute, and therefore he hath a fee simple.

¹ In Lettou and Machlinia's edition, but not in other early editions, the following passage is added :—

“ And they have, in such case, the same estate as where lands were given to them and the heirs of the two bodies begotten.”

CHAPTER III.

TENANT IN TAIL AFTER POSSIBILITY, ETC.

§ 32. Tenant in fee tail after possibility of issue extinct is, where tenements are given to a man and to his wife in especial tail, if one of them die without issue, the survivor is tenant in tail after possibility of issue extinct. And if they have issue, and the one die, albeit that during the life of the issue, the survivor shall not be said tenant in tail after possibility of issue extinct; yet if the issue die without issue, so as there be not any issue alive which may inherit by force of the tail, then the surviving party of the donees is tenant in tail after possibility of issue extinct.

§ 33. Also, if tenements be given to a man and to his heirs which he shall beget on the body of his wife, in this case the wife hath nothing in the tenements, and the husband is seised as donee in especial tail. And in this case, if the wife die without issue of her body begotten by her husband, then the husband is tenant in tail after possibility of issue extinct.

§ 34. And note, that none can be tenant in tail after

14 TENANT IN TAIL AFTER POSSIBILITY, ETC. [Book I.]

possibility of issue extinct, but one of the donees, or the donee in especial tail. For the donee in general tail cannot be said to be tenant in tail after possibility of issue extinct; because always during his life, he may by possibility have issue which may inherit by force of the same entail. And so in the same manner the issue, which is heir to the donees in especial tail, cannot be tenant in tail after possibility of issue extinct, for the reason abovesaid.

[And note, that tenant in tail after possibility of issue extinct shall not be punished of waste, for the inheritance that once was in him, 10 H. VI., 1. But he in the reversion may enter if he alien in fee, 45 E. III., 22.]¹

¹ Coke says: "Not in the edition (which I have). And therefore (that I may speak it once for all), it was wrong to the author to add anything (especially in one context) to his work."

CHAPTER IV.

CURTESY OF ENGLAND.

§ 35. Tenant by the curtesy of England is where a man taketh a wife seised in fee simple, or in fee tail general, or seised as heir in tail especial, and hath issue by the same wife, male or female born alive, albeit the issue after¹ dieth or liveth, yet if the wife dies, the husband shall hold the land during his life by the law of England. And he is called tenant by the curtesy of England, because this is used in no other realm but in England only.

And some have said, that he shall not be tenant by the curtesy, unless the child, which he hath by his wife, be heard cry; for by the cry it is proved that the child was born alive. Therefore quære.

¹ *I. e.* afterwards.

CHAPTER V.

DOWER.

§ 36. Tenant in dower is where a man is seised of certain lands or tenements in fee simple, fee tail general, or as heir in special tail, and taketh a wife, and dieth, the wife, after the decease of her husband, shall be endowed of the third part of such lands and tenements as were her husband's at any time during the coverture, to have and to hold to the same wife in severalty, by metes and bounds, for term of her life, whether she hath issue by her husband or no, and of what age soever the wife be, so as she be past the age of nine years at the time of the death of her husband, [for she must be above nine years old at the time of the decease of her husband,] otherwise she shall not be endowed.

§ 37. And note, that by the common law the wife shall have for her dower but the third part of the tenements which were her husband's during the espousals; but by the custom of some county, she shall have the half, and by the custom in some town or borough, she shall have the whole; and in all these cases she shall be called tenant in dower.

§ 38. Also, there be two other kinds of dower, viz. dower which is called dowment at the church door, and dower called dowment by the father's assent.

§ 39. Dowment at the church door is, where a man of full age seised in fee simple, who shall be married to a woman, and when he cometh to the church door to be married, there, after affiance and troth plighted between them, he endoweth the woman of his whole land, or of the half, or other lesser part thereof, and there openly doth declare the quantity and the certainty of the land which she shall have for her dower. In this case the wife, after the death of the husband, may enter into the said quantity of land of which her husband endowed her, without other assignment of any.

§ 40. Dowment by assent of the father is, where the father is seised of tenements in fee, and his son and heir apparent, when he is married, endoweth his wife at the monastery or church door, of parcel of his father's lands or tenements with the assent of his father, and assigns the quantity and parcels. In this case, after the death of the son, the wife shall enter into the same parcel without the assignment of any. But it hath been said in this case, that it behoveth the wife to have a deed of the father to prove his assent and consent to this endowment. [M. 44 E. III., f. 45.]¹

¹Coke says: "And here it is not well done (of him that made the addition to our author) to vouch 44 E. III., fo. 45, because the author himself vouched it not; for if he meant to have vouched authorities, he would have vouched more than one in

§ 41. And if, after the death of her husband, she entereth, and agree to any such dower of the said dowers at the church door, &c., then she is concluded to claim any other dower by the common law of any the lands or tenements which were her husband's. But if she will, she may refuse such dower at the church door, &c., and then she may be endowed after the course of the common law.

§ 42. And note, that no wife shall be endowed, *ex assensu patris* in form aforesaid, but where her husband is son and heir apparent to his father. *Quære* of these two cases of dowment *ad ostium ecclesie*, &c., if the wife, at the time of the death of her husband, be not past the age of nine years, whether she shall have dower or no.

§ 43. And note, that in all cases where the certainty appeareth what lands or tenements the wife shall have for her dower, there the wife may enter, after the death of her husband, without assignment of any. But where the certainty appears not, as to be endowed of the third part, to have in severalty, or the moiety according to the custom, to hold in severalty, in such cases it behoveth that her dower be assigned unto her after the death of her husband; because it doth not appear before assignment what part of the lands or tenements she shall have for her dower.

this case, and those that he vouched he would have cited truly: but this case is mistaken both in the year and in the leaf, for whereas it is cited in 44 E. III., it is in 40 E. III., and whereas he saith it is fo. 45, it is fo. 43."

§ 44. But if there be two joint tenants of certain land in fee, and the one alieneth that which belongeth to him, to another in fee, who taketh a wife, and after dieth; in this case the wife for her dower shall have the third part of the moiety which her husband purchased, to hold in common (as her part amounteth) with the heir of her husband, and with the other joint tenant, which did not alien; for that in this case her dower cannot be assigned by metes and bounds.

§ 45. And it is to be understood, that the wife shall not be endowed of lands or tenements which her husband holdeth jointly with another at the time of his death; but where he holdeth in common, otherwise it is, as in the case next abovesaid.

§ 46. And it is to be understood, that if tenant in tail endoweth his wife at the church door, as is aforesaid, this shall little or nothing at all avail the wife; for that, that after the decease of her husband, the issue in tail may enter upon her possession; and so may he in the reversion, if there be no issue in tail then alive.

§ 47. Also, if a man seised in fee simple, being within age, endoweth his wife at the monastery or church door, and dieth, and his wife enter, in this case the heir of the husband may out her. But otherwise it is (as it seemeth) where the father is seised in fee, and the son within age endoweth his wife *ex assensu patris*, the father being then of full age.

§ 48. Also, there is another dower, which is called dowment *de la plus beale*. And this is in case where a

man is seised of forty acres of land, and he holdeth twenty acres of the said forty acres, of one, by knight's service, and the other twenty acres, of another, in socage, and taketh wife, and hath issue a son, and dieth, his son being within the age of fourteen years, and the lord of whom the land is holden by knight's service entereth into the twenty acres holden of him, and holdeth them as guardian in chivalry during the nonage of the infant, and the mother of the infant entereth into the residue, and occupieth it as guardian in socage; if in this case the wife bringeth a writ of dower against the guardian in chivalry, to be endowed of the tenements holden by knight's service, in the king's court, or other court, the guardian in chivalry may plead in such case all this matter, and shew how the wife is guardian in socage, as aforesaid; and pray that it may be adjudged by the court, that the wife may endow herself *de la plus beale*, i. e. of the most fair of the tenements which she hath as guardian in socage, after the value of the third part which she claims by her writ of dower, to have the tenements holden by knight's service. And if the wife cannot gainsay this, then the judgment shall be given, that the guardian in chivalry shall hold the lands holden of him during the nonage of the infant, quit from the woman, &c.¹

§ 49. And note, that after such a judgment given,

¹ Some of the earliest French texts add : " and that the wife may endow herself of the fairest part of the lands which she hath as guardian in socage, after the value, &c."

the wife may take her neighbours, and in their presence endow herself by metes and bounds of the fairest part of the tenements which she hath as guardian in socage,¹ to have and to hold to her for term of her life: and this dower is called dower *de la plus beale*.

§ 50. And note, that such dowment cannot be, but where a judgment is given in the king's court, or in some other court, &c.,² and this is for the preservation of the estate of the guardian in chivalry during the nonage of the infant.

§ 51. And so you may see five kinds of dower, viz. dower by the common law, dower by the custom, dower *ad ostium ecclesiæ*, dower *ex assensu patris*, and dower *de la plus beale*.

§ 52. And *memorandum*, that in every case where a man taketh a wife seised of such an estate of tenements, &c. as the issue, which he hath by his wife, may by possibility inherit the same tenements of such an estate as the wife hath, as heir to the wife; in this case, after the decease of the wife, he shall have the same tenements by the curtesy of England, but otherwise not.

§ 53. And also, in every case where a woman taketh a husband seized of such an estate in tenements, &c., so

¹{ to the value of the third part of the tenements which the guardian in chivalry hath, &c. }

Throughout this edition braces in the foot-notes indicate that according to the best French texts the inclosed words ought to be inserted.

²{ that the wife can do this ; }

as by possibility it may happen that the wife may have issue by her husband, and that the same issue may by possibility inherit the same tenements of such an estate as the husband hath, as heir to the husband, of such tenements she shall have her dower, and otherwise not. For if tenements be given to a man, and to the heirs which he shall beget of the body of his wife, in this case the wife hath nothing in the tenements, and the husband hath an estate but as donee in special tail. Yet if the husband die without issue, the same wife shall be endowed of the same tenements; because the issue, which she by possibility might have had by the same husband, might have inherited the same tenements. But if the wife dieth, leaving her husband, and after the husband takes another wife, and dieth, his second wife shall not be endowed in this case, for the reason aforesaid.

§ 54. [Note, if a man be seised of certain lands, and taketh wife, and after alieneth the same land with warranty, and after the feoffor and feoffee die, and the wife of the feoffor bring an action of dower against the issue of the feoffee, and he vouch the heir of the feoffor, and hanging the voucher and undetermined, the wife of the feoffee brings her action of dower against the heir of the feoffee, and demand the third part of that whercof her husband was seised, and will not demand the third part of these two parts of which her husband was seised; it was adjudged, that she should have no judgment until such time as the other plea were determined.]¹

¹ Coke says: "You may easily perceive by the context that

§ 55. [And note, Vavisor saith, that if a man be seised of land and committeth felony, and after alieneth, and after is attaint, the wife shall have a good action of dower against the feoffee; but if it be escheated to the king, or to the lord, she shall not have a writ of dower. And so see the difference, and inquire what the law is herein.]¹

this shaft came never out of Littleton's quiver of choice arrows." Hargrave and Butler's notes say: "It appears to have been first added in the edition by Pynson."

¹Coke says: "This is also of the new addition." Hargrave and Butler's notes say that it is in Pynson and the subsequent editions.

CHAPTER VI

TENANT FOR LIFE.

§ 56. Tenant for term of life, is where a man letteth lands or tenements to another for term of the life of the lessee, or for term of the life of another man. In this case the lessee is tenant for term of life. But by common speech, he which holdeth for term of his own life, is called tenant for term of his life; and he which holdeth for term of another's life, is called tenant for term of another man's life.

§ 57. And it is to be understood, that there is feoffor and feoffee, donor and donee, lessor and lessee. Feoffor is properly where a man enfeoffs another in any lands or tenements in fee simple, he which maketh the feoffment is called the feoffor, and he to whom the feoffment is made is called the feoffee. And the donor is properly where a man giveth certain lands or tenements to another in tail, he which maketh the gift is called the donor, and he to whom the gift is made, is called the donee. And the lessor is properly where a man letteth to another lands or tenements for term of life, or for term of years, or to hold at will, he which maketh the

lease is called lessor, and he to whom the lease is made is called lessee. And every one which hath an estate in any lands or tenements for term of his own or another man's life, is called tenant of freehold, and none other of a lesser estate can have a freehold: but they of a greater estate have a freehold; for he in fee simple hath a freehold, and tenant in tail hath a freehold, &c.

CHAPTER VII.

TENANT FOR YEARS.

§ 58. Tenant for term of years is where a man letteth lands or tenements to another for term of certain years, after the number of years that is accorded between the lessor and the lessee. And when the lessee entereth by force of the lease, then is he tenant for term of years; and if the lessor in such case reserve to him a yearly rent upon such lease, he may choose for to distrain for the rent in the tenements let, or else he may have an action of debt for the arrearages against the lessee. But in such case it behoveth, that the lessor be seised in the same tenements at the time of his lease; for it is a good plea for the lessee to say, that the lessor had nothing in the tenements at the time of the lease, except the lease be made by deed indented, in which case such plea lieth not for the lessee to plead.

§ 59. And it is to be understood, that in a lease for years, by deed or without deed, there needs no livery of seisin to be made to the lessee but he may enter when he will by force of the same lease. But of feoffments

made in the country, or gifts in tail, or lease for term of life; in such cases where a freehold shall pass, if it be by deed or without deed, it behoveth to have livery of seisin.

§ 60. But if a man letteth lands or tenements by deed, or without deed, for term of years, the remainder over to another for life, or in tail, or in fee; in this case it behoveth, that the lessor maketh livery of seisin to the lessee for years, otherwise nothing passeth to them in the remainder, although that the lessee enter into the tenements. And if the termor in this case entereth before any livery of seisin made to him, then is the freehold, and also the reversion, in the lessor. But if he maketh livery of seisin to the lessee, then is the freehold, together with the fee to them in the remainder, according to the form of the grant and the will of the lessor.

§ 61. And if a man will make a feoffment, by deed or without deed, of lands or tenements which he hath in divers towns in one county, the livery of seisin made in one parcel of the tenements in one town, in the name of all the rest, is sufficient for all other the lands and tenements comprehended within the same feoffment in all other the towns in the same county. But if a man maketh a deed of feoffment of lands or tenements in divers counties, there it behoveth in every county to have a livery of seisin.

§ 62. And in some case a man shall have by the grant of another, a fee simple, fee tail, or freehold without livery of seisin. As if there be two men, and each of them is seised of one quantity of land in one county,

and the one granteth his land to the other in exchange for the land which the other hath, and in like manner the other granteth his land to the first grantor in exchange for the land which the first grantor hath; in this case each may enter into the other's land, so put in exchange, without any livery of seisin; and such exchange, made by parol, of tenements within the same county, without writing, is good enough.

§ 63. And if the lands or tenements be in divers counties, viz. that which the one hath in one county, and that which the other hath in another county, there it behoveth to have a deed indented made between them of this exchange.

§ 64. And note, that in exchanges it behoveth, that the estates which both parties have in the lands so exchanged, be equal; for if the one willeth and grant that the other shall have his land in fee tail for the land which he hath of the grant of the other in fee simple, although that the other agree to this, yet this exchange is void, because the estates be not equal.

§ 65. In the same manner it is, where it is granted and agreed between them, that the one shall have in the one land fee tail, and the other in the other land but for term of life; or if the one shall have in the one land fee tail general, and the other in the other land fee tail especial, &c. So always it behoveth that in exchange the estates of both parties be equal, viz. if the one hath a fee simple in the one land, that the other shall have like estate in the other land; and if the one hath

fee tail in the one land, the other ought to have the like estate in the other land, &c., and so of other estates. But it is nothing to charge of the equal value of the lands; for albeit that the land of the one be of a far greater value than the land of the other, this is nothing to the purpose, so as the estates made by the exchange be equal. And so in an exchange there be two grants, for each party granteth his land to the other in exchange, &c., and in each of their grants mention shall be made of the exchange.

§ 66. Also, if a man letteth land to another for term of years, albeit the lessor dieth before the lessee entereth into the tenements, yet he may enter into the same tenements after the death of the lessor, because the lessee by force of the lease hath right presently to have the tenements according to the form of the lease. But if a man maketh a deed of feoffment to another, and a letter of attorney to one to deliver to him seisin by force of the same deed; yet if livery of seisin be not executed in the life of him which made the deed, this availeth nothing, for that the other had nought to have the tenements according to the purport of the said deed, before livery of seisin made; and if there be no livery of seisin, then after the decease of him who made the deed, the right of these tenements is forthwith in his heir, or in some other.

§ 67. Also, if tenements be let to a man for term of half a year, or for a quarter of a year, &c. in this case, if the lessee commit waste, the lessor shall have a writ of waste against him, and the writ shall say, *quod tenet ad*

terminum annorum; but he shall have an especial declaration upon the truth of his matter, and the count shall not abate the writ, because he cannot have any other writ upon the matter.

CHAPTER VIII.

TENANT AT WILL.

§ 68. Tenant at will is, where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called tenant at will, because he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him. Yet if the lessee soweth the land, and the lessor, after it is sown, and before the corn is ripe, put him out, yet the lessee shall have the corn, and shall have free entry, egress, and regress, to cut and carry away the corn, because he knew not at what time the lessor would enter upon him. Otherwise it is if tenant for years, which knoweth the end of his term,¹ doth sow the land, and his term endeth before the corn is ripe. In this case the lessor, or he in the reversion, shall have the corn, because the lessee knew the certainty of his term and when it would end.

§ 69. Also, if a house be let to one to hold at will, by force whereof the lessee entereth into the house, and brings his household stuff into the same, and after the lessor puts him out, yet he shall have free entry, egress,

¹Tomlins says: "Rastell's translation renders this passage, 'before the end of his term,' which it is apprehended is the true reading."

and regress, into the said house by reasonable time to take away his goods and utensils. As if a man seised of a mease in fee simple, fee tail, or for life, hath certain goods within the said house, and makes his executors, and dieth; whosoever after his decease hath the house, his executors shall have free entry, egress, and regress, to carry out of the same house the goods of their testator by reasonable time.

§ 70. Also, if a man make a deed of feoffment to another of certain lands, and delivereth to him the deed, but not livery of seisin; in this case he, to whom the deed is made, may enter into the land, and hold and occupy it at the will of him, which made the deed, because it is proved by the words of the deed, that it is his will that the other should have the land; but he which made the deed may put him out when it pleaseth him.

§ 71. Also, if a house be leased to hold at will, the lessee is not bound to sustain or repair the house, as tenant for term of years is tied. But if tenant at will commit voluntary waste, as in pulling down of houses, or in felling of trees, it is said that the lessor shall have an action of trespass for this against the lessee. As if I lend to one my sheep to tathe his land, or my oxen to plough the land, and he killeth my cattle, I may well have an action of trespass against him, notwithstanding the lending.

§ 72. Note, if the lessor upon a lease at will reserve to him a yearly rent, he may distrain for the rent behind, or have for this an action of debt at his own election.

CHAPTER IX.

TENANT BY COPY.

§ 73. Tenant by copy of court roll, is, as if a man be seised of a manor, within which manor there is a custom which hath been used time out of mind of man, that certain tenants within the same manor have used to have lands and tenements, to hold to them and their heirs in fee simple, or fee tail, or for term of life, &c., at the will of the lord according to the custom of the same manor.

§ 74. And such a tenant may not alien his land by deed, for then the lord may enter as into a thing forfeited unto him. But if he will alien his land to another, it behoveth him after the custom to surrender the tenements in court, &c., into the hands of the lord, to the use of him that shall have the estate, in this form, or to this effect:

A. of B. cometh into this court, and surrendereth in the same court a mease, &c., into the hands of the lord, to the use of C. of D. and his heirs, or the heirs issuing of his body, or for term of life, &c. And upon that cometh the aforesaid C. of D. and taketh of the lord in the same court the aforesaid mease, &c. To have and to hold to him and to his heirs, or to him and to his heirs, issuing

of his body, or to him for term of life, at the lord's will, after the custom of the manor, to do and yield therefore the rents, services, and customs thereof before due and accustomed, &c. and giveth the lord for a fine, &c. and maketh unto the lord his fealty, &c.

§ 75. And these tenants are called tenants by copy of court roll; because they have no other evidence concerning their tenements, but only the copies of court rolls.

§ 76. And such tenants shall neither implead nor be impleaded for their tenements by the king's writ. But if they will implead others for their tenements, they shall have a plaint entered in the lord's court in this form, or to this effect: A. of B. complains against C. of D. of a plea of land, viz. of one messuage, forty acres of land, four acres of meadow, &c. with the appurtenances, and makes protestation to follow this complaint in the nature of the king's writ of assize of mordancester at the common law, or, of an assize of novel disseisin, or formed on in the discender at the common law, or in the nature of any other writ, &c. Pledges to prosecute F. G. &c.

§ 77. And although that some such tenants have an inheritance according to the custom of the manor, yet they have but an estate but at the will of the lord according to the course of the common law. For it is said, that if the lord do oust them, they have no other remedy but to sue to their lords by petition; for if they should have any other remedy, they should not be said to be tenants at will of the lord according to the custom of the manor.

But the lord cannot break the custom which is reasonable in these cases.

[But Brian chief justice said, that his opinion hath always been, and ever shall be, that if such tenant by custom paying his services be ejected by the lord, he shall have an action of trespass against him. H. 21 E. IV. And so was the opinion of Danby chief justice in 7 E. IV. For he saith, that, tenant by the custom is as well inheritor to have his land according to the custom, as he which hath a freehold at the common law.]

CHAPTER X.

TENANT BY THE VERGE.

§ 78. Tenants by the verge are in the same nature as tenants by copy of court roll. But the reason why they be called tenants by the verge, is, for that when they will surrender their tenements, into the hands of their lord to the use of another, they shall have a little rod (by the custom) in their hand, the which they shall deliver to the steward or to the bailiff according to the custom of the manor, and he which shall have the land shall take up the same land in court, and his taking shall be entered upon the roll, and the steward or bailiff according to the custom shall deliver to him that taketh the land the same rod, or another rod, in the name of seisin; and for this cause they are called tenants by the verge: but they have no other evidence but by copy of court roll.

§ 79. And also in divers lordships and manors there is this custom, viz. if such a tenant, which holdeth by custom, will alien his lands or tenements, he may surrender his tenements to the bailiff, or to the reve, or to two honest men of the same lordship, to the use of him which shall have the land, to have in fee simple, fee tail, or for term of life, &c. And they shall present all this

at the next court, and then he, which shall have the land by copy of court roll, shall have the same according to the intent of the surrender.

§ 80. And so it is to be understood, that in divers lordships, and in divers manors, there be many and divers customs in such cases, as to take tenements, and as to plead, and as to other things and customs to be done; and whatsoever is not against reason may well be admitted and allowed.

§ 81. And these tenants which hold according to the custom of a lordship or manor, albeit they have an estate of inheritance according to the custom of the lordship or manor, yet because they have no freehold by the course of the common law, they are called tenants by base tenure.

§ 82. And there are divers diversities between tenant at will, which is in by lease of his lessor by the course of the common law, and tenant according to the custom of the manor in form aforesaid. For tenant at will according to the custom may have an estate of inheritance (as is aforesaid) at the will of the lord, according to the custom and usage of the manor. But if a man hath lands or tenements, which be not within such a manor or lordship where such a custom hath been used in form aforesaid, and will let such lands or tenements to another, to have and to hold to him and to his heirs at the will of the lessor, these words (to the heirs of the lessee) are void. For in this case if the lessee dieth, and his heir enter, the lessor shall have a good action of trespass against him;

but not so against the heir of tenant by the custom in any case, &c., for that the custom of the manor in some case may aid him to bar his lord in an action of trespass, &c.

§ 83. Also, the one tenant by the custom in some places ought to repair and uphold his houses, and the other tenant at will ought not.

§ 84. Also, the one tenant by the custom shall do fealty, and the other not. And many other diversities there be between them.

BOOK THE SECOND.

CHAPTER I.

HOMAGE.

§ 85. HOMAGE is the most honorable service, and most humble service of reverence, that a franktenant may do to his lord. For when the tenant shall make homage to his lord, he shall be ungirt, and his head uncovered, and his lord shall sit, and the tenant shall kneel before him on both his knees, and hold his hands jointly together between the hands of his lord, and shall say thus: I become your man from this day forward [of life and limb, and of earthly worship,] and unto you shall be true and faithful, and bear to you faith for the tenements that I claim to hold of you, saving the faith that I owe unto our sovereign lord the king; and then the lord, so sitting, shall kiss him.

§ 86. But if an abbot, or a prior, or other man of religion, shall do homage to his lord, he shall not say, I become your man, &c., for that he hath professed himself to be only the man of God. But he shall say thus: I do homage unto you, and to you I shall be true and faithful,

and faith to you bear for the tenements which I hold of you, saving the faith which I do owe unto our lord the king.

§ 87. Also, if a woman sole shall do homage, she shall not say, I become your woman; for it is not fitting that a woman should say, that she will become a woman to any man, but to her husband, when she is married. But she shall say, I do to you homage, and to you shall be faithful and true, and faith to you shall bear for the tenements I hold of you, saving the faith I owe to our sovereign lord the king.

§ 88. Also, a man may see a good note in M. 15 E. III., where a man and his wife did homage and fealty in the Common Place,¹ which is written in this form. Note, that J. Lewkner and Eliz. his wife did homage to W. Thorpe in this manner: the one and the other held their hands jointly between the hands of W. T. and the husband saith in this form: We do to you homage, and faith to you shall bear, for the tenements which we hold of A., your conusor, who hath granted to you our services in B. and C. and other towns, &c., against all persons,²

¹ *I.e.* Common Pleas.

² Instead of "persons," the translation in Co. Lit. has "nations." Ritsa's *Science of the Law*, 110, points out the mistranslation. So do Hargrave and Butler's notes, which say: "Lord Coke's translation of the word *gents* is erroneous; for as Mr. Madox justly remarks, though the Roman word *gens* signifies sometimes 'a nation,' and sometimes 'a family,' and *gents* is Romanic or bastard Roman, and derived from *gens*, yet like many other Romanic words it acquired a new import, and ac-

saving the faith which we owe to our lord the king, and to his heirs, and to our other lords; and both the one and the other kissed him. And after¹ they did fealty, and both of them held their hands upon the book, and the husband said the words, and both kissed the book.²

§ 89. Note, if a man hath several tenancies, which he holdeth of several lords, that is to say, every tenancy by homage; then when he doth homage to one of his lords, he shall say in the end of his homage done, Saving the faith which I owe to our lord the king, and to my other lords.

§ 90. Note, none shall do homage but such as have an estate in fee simple, or fee tail, in his own right, or in the right of another. For it is a maxim in law, that he which hath an estate but for term of life shall neither do homage nor take homage. For if a woman hath lands or tenements in fee simple, or in fee tail, which she holdeth of her lord by homage, and taketh husband and have issue, then the husband in the life of the wife shall do homage, because he hath title to have the tenements by curtesy of England if he surviveth his wife, and also he holdeth in right of his wife. But if the wife dies before homage done by the husband in the life of his wife, and the husband holdeth himself in as tenant by the curtesy,

ording to that denotes 'men' or 'persons.' See *Mad. Bar. Angl.* 167, and *Hist. Exch.*, in pref., p. 13."

¹ *I.e.* afterwards.

² In many early French texts, but not in Lettou and Machlinia, this section is transferred to the next chapter, where it appears just before the present section 94.

then he shall not do homage to his lord, because he then hath an estate but for term of life.

More shall be said of homage in the tenure of homage ancestral.

CHAPTER II.

FEALTY.

§ 91. Fealty is the same that *fidelitas* is in Latin. And when a freeholder doth fealty to his lord, he shall hold his right hand upon a book, and shall say thus: Know ye this, my lord, that I shall be faithful and true unto you, and faith to you shall bear for the lands which I claim to hold of you, and that I shall lawfully do to you the customs and services which I ought to do, at the terms assigned, so help me God and his saints; and he shall kiss the book. But he shall not kneel when he maketh his fealty, nor shall make such humble reverence as is aforesaid in homage.

§ 92. And there is great diversity between the doing of fealty and of homage; for homage cannot be done to any but to the lord himself; but the steward of the lord's court, or bailiff, may take fealty for the lord.

§ 93. Also, tenant for term of life shall do fealty, and yet he shall not do homage. And divers other diversities there be between homage and fealty.

§ 94. Also, a man may see in 15 E. III. how a man and his wife shall do homage and fealty in the Common

Place,¹ which is written before in the tenure of homage.

More shall be said of fealty in the tenure in socage, and in frankalmoign, and in the tenure by homage ancestral.

¹ *I.e.* Common Pleas.

CHAPTER III.

ESCUAGE.

§ 95. Escuage is called in Latin *scutagium*, that is, service of the shield; and that tenant which holdeth his land by escuage holdeth by knight's service. And also it is commonly said that some hold by the service of one knight's fee, and some by the half of a knight's fee. And it is said that when the king makes a voyage royal into Scotland to subdue the Scots, then he which holdeth by the service of one knight's fee ought to be with the king forty days, well and conveniently arrayed for the war. And he which holdeth his land by the moiety of a knight's fee ought to be with the king twenty days; and he which holdeth his land by the fourth part of a knight's fee ought to be with the king ten days; and so he that hath more, more, and he that hath less, less.

§ 96. But it appeareth by the pleas and arguments made in a plea upon a writ of detinue of a writing obligatory brought by one H. Gray, T. 7 E. III., that it is not needful for him which holdeth by escuage, to go himself with the king, if he will find another able person for him conveniently arrayed for the war to go with

the king. And this seemeth to be good reason. For it may be that he which holdeth by such services is languishing, so as he can neither go nor ride. And also an abbot, or other man of religion, or a feme sole, which hold by such services, ought not in such case to go in proper person. And Sir William Herle, then chief justice of the Common Place,¹ said in this plea that escuage shall not be granted but where the king goes himself in his proper person. And it was demurred in judgment in the same plea, whether the 40 days should be accounted from the first day of the muster of the king's host made by the commissioners² and by the commandment of the king, or from the day that the king first entered into Scotland. Therefore inquire of this.

§ 97. And after such a voyage royal into Scotland, it is commonly said that, by authority of parliament, the escuage shall be assessed and put in certain; *scil.* a certain sum of money, how much every one which holdeth by a whole knight's fee, who was neither by himself, nor by any other, with the king, shall pay to his lord of whom he holds his land by escuage. As put the case that it was ordained by the authority of the parliament,

¹ *I.e.* Common Pleas.

² Instead of "commissioners," the translation in Co. Lit. has "commons." Ritao's Science of the Law, 115, points out the mistake. Hargrave and Butler's notes, citing Ritao, say: "'Commons' seems to be inserted for 'commissioners.'" Tomlins says: "This word, which in every printed copy reads 'commons,' is a corruption (by means of a well known abbreviation) from 'commissioners.'"

that every one which holdeth by a whole knight's fee, who was not with the king, shall pay to his lord forty shillings; then he which holdeth by the moiety of a knight's fee shall pay to his lord but twenty shillings; and he which holdeth by the fourth part of a knight's fee shall pay but ten shillings; and he which hath more, more, and which less, less.

§ 98. And some hold by the custom¹ that, if escuage be assessed by authority of parliament at any sum of money, that they shall pay but the moiety of that sum, and some but the fourth part of that sum. But because the escuage that they should pay is uncertain, for that it is not certain how the parliament will assess the escuage, they hold by knight's service. But otherwise it is of escuage certain, of which shall be spoken in the tenure of socage.

§ 99. And if one speak generally of escuage, it shall be intended by the common speech of escuage uncertain, which is knight's service. And such escuage draweth to it homage, and homage draweth to it fealty; for fealty is incident to every manner of service, unless it be to the tenure in frankalmoigne, as shall be said afterwards in tenure of frankalmoigne. And so he which holdeth by escuage holds by homage, fealty, and escuage.

§ 100. And it is to be understood that, when escuage is so assessed by authority of parliament, every lord of whom the land is holden by escuage shall have the

¹ Instead of "some hold by the custom," the earliest French texts authorize "some tenants hold."

escuage so assessed by parliament ; because it is intended by the law, that at the beginning such tenements were given by the lords to the tenants to hold by such services, to defend their lords as well as the king, and to put in quiet their lords and the king from the Scots aforesaid.

§ 101. And because such tenements came first from the lords, it is reason that they should have the escuage of their tenants. And the lords in such cases may distrain for the escuage so assessed, or they in some cases may have the king's writs directed to the sheriffs of the same counties, &c., to levy such escuage for them, as it appeareth by the Register. But of such tenants as hold of the king by escuage, which were not with the king in Scotland, the king himself shall have the escuage.

§ 102. Item, in such case aforesaid, where the king maketh a voyage royal into Scotland, and the escuage is assessed by parliament, if the lord distrain his tenant, that holdeth of him by service of a whole knight's fee, for the escuage so assessed, &c., and the tenant pleadeth, and will aver that he was with the king in Scotland, &c., by forty days, and the lord will aver the contrary, it is said that it shall be tried by the certificate of the marshal¹ of the king's host in writing under his seal, which shall be sent to the justices.²

¹ Instead of " marshal," some of the earliest French texts, including Lettou and Machlinia, authorize " constable."

² Instead of " which shall be sent to the justices," Lettou and Machlinia's text gives simply "&c."

CHAPTER IV.

KNIGHT'S SERVICE.

§ 103. Tenure by homage, fealty, and escuage, is to hold by knight's service, and it draweth to it ward, marriage, and relief. For when such tenant dieth, and his heir male be within the age of twenty-one years, the lord shall have the land holden of him until the age of the heir of twenty-one years; the which is called full age, because such heir, by intendment of the law, is not able to do such knight's service before his age of twenty-one years. And also if such heir be not married at the time of the death of his ancestor, then the lord shall have the wardship and marriage of him. But if such tenant dieth, his heir female being of the age of fourteen years or more, then the lord shall not have the wardship of the land, nor of the body; because that a woman of such age may have a husband able to do knight's service. But if such heir female be within the age of fourteen years, and unmarried at the time of the death of her ancestor, the lord shall have the wardship of the land holden of him until the age of such heir female of sixteen years;

for it is given by the statute of Westminster I.,¹ cap. 22, that by the space of two years next ensuing the said fourteen years, the lord may tender convenable marriage without disparagement to such heir female. And if the lord within the said two years do not tender such marriage, &c., then she at the end of the said two years may enter, and put out her lord. But if such heir female be married within the age of fourteen years in the life of her ancestor, and her ancestor dieth, she being within the age of fourteen years, the lord shall have only the wardship of the land until the end of the fourteen years of age of such heir female, and then her husband and she may enter into the land, and oust the lord. For this is out of the case of the said statute, insomuch as the lord cannot tender marriage to her which is married, &c. For before the said statute of Westminster I., such issue female, which was within the age of fourteen years at the time of the death of her ancestor, and after she had accomplished the age of fourteen years, without any tender of marriage by the lord unto her, such heir female might have entered into the land and ousted the lord, as appeareth by the rehearsal and words of the said statute; so as the said statute was made (as it seemeth) in such case altogether for the advantage of lords. But yet this is always intended by the words of the same statute, that the lord shall not have these two years after the fourteen years, as is aforesaid, but where such heir female is

¹ 3 E. I. (1275).

within the age of fourteen years, and unmarried at the time of the death of her ancestor.¹

§ 104. Note, that the full age of male and female, according to common speech, is said the age of twenty-one years. And the age of discretion is called the age of fourteen years; for at this age, the infant which is married within such age to a woman, may agree or disagree to such marriage.

¹Hargrave and Butler's notes say: "In Letton and Machlinia and the Paper MS. there is the following addition:—

"*Item*, If a man holds a manor of another by knight's service, and he holds another manor of another man by the same service, but holds one manor by priority, &c., and the other manor by posteriority, and has issue a daughter, and dies, and the manors descend to the daughter then being within the age of fourteen years, and the lord of whom one of the manors is held by priority seizes the wardship of the body of the heir and of the manor held of him, and the other lord seizes the wardship of the other manor held of him, in this case, when the daughter comes to the age of fourteen years, she shall enter on the manor held by posteriority although she be then unmarried.

"For the words of the same statute of Westminster I. are in the form which followeth:

"And of heirs females, after they have accomplished the age of fourteen years, and the lord (to whom the marriage belongeth) will not marry them, but from covetise of the land will keep them unmarried; it is provided, that the lord shall not have nor keep, by reason of marriage, the lands of such heirs females more than two years after the term of the said fourteen years, &c.; by which words it may be proved, that after the age of fourteen years no one shall have the lands in such case, &c., except him to whom the marriage belongs, &c., because such marriage does not belong to him of whom the land is held by posteriority, &c.. such heir female, when she comes to the age of fourteen years, may well enter on such land which is so held by posteriority, &c." See 35 H. VI. 52."

§ 105. And if the guardian in chivalry doth once marry the ward within his age of fourteen years to a woman, and if afterward at his age of fourteen years he disagree to the marriage, it is said by some, that the infant is not tied by the law to be again married by his guardian, for that the guardian had once the marriage of him, and because he was once out of his ward as to the ward of his body. And when he had once the marriage of him, and he was once out of his wardship, he shall no more have the marriage of him.¹

§ 106. In the same manner it is, if the guardian marry him, and the wife die, the infant being within the age of fourteen years, or twenty-one.

§ 107. And that such infant may disagree to such marriage, when he comes to the age of fourteen years, it is proved by the words of the statute of Merton,² cap. 6, which saith thus:

De dominis qui maritaverint illos quos habent in custodia suâ, villanis, vel aliis, sicut burgensibus, ubi disparagentur, si talis hæres fuerit infra 14 annos, et talis ætatis quòd matrimonio consentire non possit, tunc si parentes illi conquerantur, dominus amittat custodiam illam usque ad ætatem hæredis, et omne commodum quod inde receptum fuerit, convertatur ad commodum hæredis infra ætatem existentis, secundum dispositionem parentum, propter dedecus ei impositum. Si autem

¹ Lettou and Machlinia's edition adds "Inquire of this."

² 20 H. III. (1235-6).

fuert 14 *ans et ultra*, quòd consentire possit et tali matrimonio consenserit, nulla sequatur pœna.¹

And so it is proved by the same statute, that there is no disparagement but where he which is in ward is married within the age of fourteen years.

§ 108. Note, it hath been a question, how these words shall be understood (*Si parentes conquerantur*). And it seemeth to some, that considering the statute of *Magna Charta* which willeth, *quod hæredes maritentur absque disparagatione*, &c., upon which this statute of Merton upon this point is founded, that no action can be brought upon this statute,² insomuch as it was never seen or heard, that any action was brought upon the statute of Merton for this disparagement against the guardian [for the matter aforesaid] &c., and if any action might have been brought for this matter, it shall be intended³ that at some time it would have been put

¹ The passage quoted is thus translated in 1 Pickering's Statutes at Large, 29 :—

“ And as touching lords, which marry those that they have in ward to villeins, or other, as burgesses, where they be disparaged, if any such an heir be within the age of fourteen years, and of such age that he cannot consent to marriage, then, if his friends complain of the same lord, the lord shall lose the wardship unto the age of the heir : and all the profit, that thereof shall be taken, shall be converted to the use of the heir being within age, after the disposition and provision of his friends, for the shame done to him ; but if he be fourteen years and above, so that he may consent, and do consent to such marriage, no pain shall follow.”

² Instead of “ that no action can be brought upon this statute,” the best French texts authorize “ as it seemeth, and.”

³ Lettou and Machlinia's edition adds “ by common presumption before this time.”

in ure.¹ And note that these words shall be understood thus, *Si parentes conquerantur, id est, si parentes inter eos lamententur*, which is as much as to say as if the cousins of such infant have cause to make lamentation or complaint amongst themselves, for the shame done to their cousin so disparaged, which in manner is a shame to them, then may the next cousin, to whom the inheritance cannot descend, enter and oust the guardian in chivalry. And if he will not, another cousin of the infant may do this, and take the issues and profits to the use of the infant, and of this to render an account to the infant when he comes to his full age. Or otherwise the infant within age may enter himself, and oust the guardian, &c. *Sed quære de hoc.*

§ 109. Also, there be many and divers other disparagements, which are not specified in the same statute. As if the heir which is in ward be married to one which hath but one foot, or but one hand, or which is deformed, decrepit, or having some horrible disease, or great and continual infirmity; and (if he be an heir male) if he be married to a woman past the age of child-bearing. And there be other causes of disparagement; but inquire of them, for it is a good matter to understand.

§ 110. And of heirs male which be within the age of twenty-one years after the decease of their ancestor and not married, in this case the lord shall have the marriage of such heir, and he shall have time and space to tender

¹ *I.e.* use.

to him covenable marriage without disparagement within the said time of twenty-one years. And it is to be understood, that the heir in this case may chuse whether he will be married or no; but if the lord, which is called guardian in chivalry, tenders to such heir covenable marriage within the age of twenty-one years without disparagement, and the heir refuseth this, and doth not marry himself within the said age, then the guardian shall have the value of the marriage of such heir male. But if such heir marrieth himself within the age of twenty-one years, against the will of the guardian in chivalry, then the guardian shall have the double value of the marriage by force of the statute of Merton aforesaid, as in the same statute is more fully at large comprised.

§ 111. Also, divers tenants hold of their lords by knight's service, and yet they hold not by escuage, neither shall they pay escuage; as they which hold of their lords by castle-ward, that is to say, to ward a tower of the castle of their lord, or a door, or some other place of the castle, upon reasonable warning, when their lords hear that the enemies will come or are come in England. And in many other cases a man may hold by knight's service, and yet he holdeth not by escuage, nor shall pay escuage, as shall be said in the tenure by grand serjeanty. But in all cases where a man holds by knight's service, this service draweth to the lord ward and marriage.

§ 112. And if a tenant, which holdeth of his lord by the service of a whole knight's fee, dieth, his heir then

being of full age, *scil.* of twenty-one years, then the lord shall have 100s. for a relief; and of the heir of him which holds by the moiety of a knight's fee, 50s., and of him which holds by the fourth part of a knight's fee, 25s., and so he which holds more, more, and which less, less.

§ 113. Also, a man may hold his land of his lord by the service of two knights' fees; and then the heir, being of full age at the time of the death of his ancestor, shall pay to his lord ten pounds for relief.

§ 114. Note, if there be grandfather, father,¹ and son, and the mother dieth, living the father of the son, and after² the grandfather, which holds his land by knight's service, dieth seised, and his land descend to the son of the mother as heir to the grandfather, who is within age; in this case the lord shall have the wardship of the land but not of the body of the heir, because none shall be in ward of his body to any lord, living his father, for the father during his life shall have the marriage of his heir apparent, and not the lord. Otherwise it is, where the father dieth living the mother, where the land holden in chivalry descends to the son on the part of the father, &c.

§ 115. [Note, if a man be seised of land which is holden by knight's service, and maketh a feoffment in fee to his own use, and dieth seised of the use, his heir

¹ Instead of "father," the best French texts and the best translations authorize "mother."

² *i.e.* afterwards.

within age, and no will declared by him, the lord shall have a writ of right of the wardship of the body and land, as if the tenant had died seised of the demesne. And if the heir be of full age at the time of the decease of his ancestor, in this case he shall pay relief, as if he had been seised of the demesne. And this is by the statute of 4 H. VII., cap. 17.]¹

§ 116. Note, there is guardian in right in chivalry, and guardian in deed in chivalry. Guardian in right in chivalry is, where the lord by reason of his seigniorship is seised of the wardship of the lands and of the heir, *ut supra*. Guardian in deed in chivalry is, where in such case the lord after his seisin grants, by deed or without deed, the wardship of the lands, or of the heir, or of both, to another, by force of which grant the grantee is in possession. Then is the grantee called guardian *in fait*, or guardian in deed.

¹ Coke says: "This section is an addition to Littleton." Hargrave and Butler's notes say: "It was first introduced in Redman."

CHAPTER V.

SOCAGE.

§ 117. Tenure in socage is where the tenant holdeth of his lord the tenancy by certain service for all manner of services, so that the service be not knight's service. As where a man holdeth his land of his lord by fealty and certain rent, for all manner of services; or else where a man holdeth his land by homage, fealty, and certain rent, for all manner of services;¹ for homage by itself maketh not knight's service.

§ 118. Also, a man may hold of his lord by fealty only, and such tenure is tenure in socage; for every tenure which is not tenure in chivalry, is a tenure in socage.

§ 119. And it is said, that the reason, why such tenure is called and hath the name of tenure in socage, is this: because *socagium idem est quod servitium socæ*,

¹ Many French texts, including the one formerly printed in Co. Lit., add a third instance: "or where a man holdeth his land by homage and fealty for all manner of services." These words are omitted in most of the translations, both before and after the first edition: but they appear in the translation in the fourteenth edition of Co. Lit. and also in the later editions. Tomlins combines the second and third instances, thus: "or else where a man holdeth his land by homage and fealty for all manner of services."

and *soca idem est quod caruca, &c., i. e.* a soke or a plough. In ancient time, before the limitation of time of memory, a great part of the tenants, which held of their lords by socage, ought to come with their ploughs, every of the said tenants for certain days in the year to plough and sow the demesnes of the lord. And for that such works were done for the livelihood and sustenance of their lord, they were quit against their lord of all manner of services, &c. And because that such services were done with their ploughs, this tenure was called tenure in socage. And afterwards these services were changed into money, by the consent of the tenants and by the desire of the lords, viz. into an annual rent, &c. But yet the name of socage remaineth, and in divers places the tenants yet do such services with their ploughs to their lords; so that all manner of tenures, which are not tenures by knight's service, are called tenures in socage.

§ 120. Also, if a man holdeth of his lord by escuage certain, *scil.* in this manner, when the escuage runneth and is assessed by parliament to a greater or lesser sum, that the tenant shall pay to his lord but half a mark for escuage, and no more nor less, to how great a sum, or to how little the escuage runneth, &c.,¹ such tenure is tenure in socage, and not knight's service. But where the sum which the tenant shall pay for escuage is uncer-

¹Here the early French texts, except Lettou and Machlinia, add "in this case, because the escuage is in certain before that any escuage is assessed."

tain, *scil.* where it may be that the sum that the tenant shall pay for escuage to his lord, may be at one time more and at another time less, according as it is assessed, &c., such tenure is tenure by knight's service.

§ 121. Also, if a man holdeth his land to pay a certain rent to his lord for castle-guard, this tenure is tenure in socage. But where the tenant ought by himself or by another to do castle-guard, such tenure is tenure by knight's service.

§ 122. Also, in all cases where the tenant holdeth of his lord to pay unto him any certain rent, this rent is called rent service.

§ 123. Also, in such tenures in socage, if the tenant have issue and die, his issue being within the age of fourteen years, then the next friend of that heir, to whom the inheritance cannot descend, shall have the wardship of the land and of the heir until the age of fourteen years, and such guardian is called guardian in socage. For if the land descend to the heir of the part of the father, then the mother, or other next cousin of the part of the mother, shall have the wardship. And if land descend to the heir of the part of the mother, then the father or next friend of the part of the father shall have the wardship of such lands or tenements. And when the heir cometh to the age of fourteen years complete, he may enter and oust the guardian in socage, and occupy the land himself, if he will. And such guardian in socage shall not take any issues or profits of such lands or tenements to his own use, but only to the use and

profit of the heir; and of this he shall render an account to the heir, when it pleaseth the heir after he accomplisheth the age of fourteen years. But such guardian upon his account shall have allowance of all his reasonable costs and expenses in all things, &c. And if such guardian marry the heir within age of fourteen years, he shall account to the heir, or his executors, of the value of the marriage, although that he took nothing for the value of the marriage; for it shall be accounted his own folly, that he would marry him without taking the value of the marriage, unless that he marrieth him to such a marriage, that is as much worth in value as the marriage of the heir.

§ 124. And if any other man, who is not the next friend, occupies the lands or tenements of the heir as guardian in socage, he shall be compelled to yield an account to the heir, as well as if he had been next friend; for it is no plea for him in the writ of account to say, that he is not the next friend, &c., but he shall answer whether he hath occupied the lands or tenements as guardian in socage or no. But *quære*, if after the heir hath accomplished the age of fourteen years, and the guardian in socage continually occupieth the land until the heir comes to full age, *scil.* of twenty-one years, if the heir at his full age shall have an action of account against the guardian, from the time that he occupied after the said fourteen years, as guardian in socage, or against him as his bailiff.¹

¹ Coke says: "This *quære* came not out of Littleton's quiver; for it is evident, that after the age of fourteen years he shall be

§ 125. Also, if guardian in chivalry makes his executors and die, the heir being within age, &c., the executors shall have the wardship during the nonage, &c. But if the guardian in socage make his executors and die, the heir being within the age of fourteen years, his executors shall not have the wardship; but another next friend, to whom the inheritance cannot descend, shall have the wardship, &c. And the reason of this diversity is, because the guardian in chivalry hath the wardship to his own use, and the guardian in socage hath not the wardship to his own use, but to the use of the heir. And in this case where the guardian in socage dieth before any account made by him to the heir, of this the heir is without remedy, for that no writ of account lieth against the executors, but for the king only.

§ 126. Also, the lord, of whom the land is holden in socage, after the decease of his tenant, shall have relief in this manner. If the tenant holdeth by fealty and certain rent to pay yearly, &c., if the terms of payment be to pay at two terms of the year, or at four terms in the year, the lord shall have of the heir his tenant, as much as the rent amounts unto, which he payeth yearly. As if the tenant holds of his lord by fealty, and ten shil-

charged as bailiff. at any time when the heir will, either before his age of twenty-one years or after."

Hargrave and Butler's notes say: "Notwithstanding Lord Coke's observation on the *quære*, it is in Lettou and Machlinia, Rouen, Pynson, and both of the MSS."

And Tomlins says: "The *quære* is in Lettou and Machlinia, Machlinia, Rouen, Pynson 1516, both the MSS., and in Rastell's translation."

lings rent payable at certain terms of the year, then the heir shall pay to the lord ten shillings for relief, beside the ten shillings which he payeth for the rent.

[In the same manner it is, if a man be seised of certain land which is holden in socage, and maketh a feoffment in fee to his own use, and dieth seised of the use, (his heir of the age of fourteen years or more, and no will by him declared) the lord shall have relief of the heir, as afore is said. And this by the statute of 19 H. VII., cap. 15.]¹

§ 127. And in this case, after the death of the tenant, such relief is due to the lord presently, of what age soever the heir be;² because such lord cannot have the wardship of the body, nor of the land of the heir. And the lord in such case ought not to attend for the payment of his relief, according to the terms and days of payment of the rent; but he is to have his relief presently, and therefore he may forthwith distrain after the death of his tenant for relief.

§ 128. In the same manner it is, where the tenant holdeth of his lord by fealty and a pound of pepper or

¹Coke says: "This is an addition to Littleton." Hargrave and Butler's notes say: "This part about relief from the heir of *centui que use*, as Lord Coke truly observes, is an addition to Littleton: and it first appears in Redman."

²According to some texts, these words are to be added: "so that he be past the age of fourteen years." Coke says: "Those words so added are against the law, and no part of Littleton's work." Hargrave and Butler's notes say: "They were first inserted in Pynson."

cummin, and the tenant dieth, the lord shall have for relief a pound of cummin, or a pound of pepper, besides the common rent. In the same manner it is, where the tenant holdeth to pay yearly a number of capons or hens, or a pair of gloves, or certain busheis of corn, or such like.

§ 129. But in some case the lord ought to stay to distrain for his relief until a certain time. As if the tenant holds of his lord by a rose, or by a bushel of roses, to pay at the feast of St. John the Baptist, if such tenant dieth in winter, then the lord cannot distrain for his relief, until the time that roses by the course of the year may have their growth, &c. And so of the like.

§ 130. Also, if any will ask, why a man may hold of his lord by fealty only for all manner of services, inso-much as when the tenant shall do his fealty, he shall swear to his lord that he will do to his lord all manner of services due, and when he hath done fealty, in this case no other service is due: to this it may be said, that where a tenant holds his land of his lord, it behooveth that he ought to do some service to his lord. For if the tenant nor his heirs ought to do no manner of service to his lord nor his heirs, then by long continuance of time it would grow out of memory, whether the land were holden of the lord, or of his heirs, or not, and then will men more often and more readily say, that the land is not holden of the lord, nor of his heirs, than otherwise; and hereupon the lord shall lose his escheat of the land, or perchance some other forfeiture or profit which he

might have of the land. So it is reason, that the lord and his heirs have some service done unto them, to prove and testify, that the land is holden of them.

§ 131. And for that fealty is incident to all manner of tenures, but to the tenure in frankalmoign, (as shall be said in the tenure of frankalmoign), and for that the lord would not at the beginning of the tenure have any other service but fealty, it is reason, that a man may hold of his lord by fealty only; and when he hath done his fealty, he hath done all his services.

§ 132. Also, if a man letteth to another lands or tenements for term of life, without naming any rent to be reserved to the lessor, yet he shall do fealty to the lessor, because he holdeth of him. Also if a lease be made to a man for term of years, it is said, that the lessee shall do fealty to the lessor, because he holdeth of him. And this is well proved by the words of the writ of waste, when the lessor hath cause to bring a writ of waste against him; which writ shall say, that the lessee holds his tenements of the lessor for term of years. So the writ proves a tenure between them. But he, which is tenant at will, according to the course of the common law, shall not do fealty; because he hath not any sure estate. But otherwise it is of tenant at will, according to the custom of the manor; for that he is bound to do fealty to his lord for two causes. The one is, by reason of the custom; and the other is, for that he taketh his estate in such form to do his lord fealty.

CHAPTER VI.

FRANKALMOIGN.

§ 133. Tenant in frankalmoign is, where an abbot, or prior, or another man of religion, or of holy church, holdeth of his lord in frankalmoign; that is to say in Latin, *in liberam eleemosinam*, that is, in free alms. And such tenure began first in old time. When a man in old time was seised of certain lands or tenements in his demesne as of fee, and of the same land infeoffed an abbot and his covent, or prior and his covent, to have and to hold to them and their successors in pure and perpetual alms, or in frankalmoign; or by such words, to hold of the grantor or of the lessor¹ and his heirs in free alms: in such case the tenements were holden in frankalmoign.

§ 134. In the same manner it is, where lands or tenements were granted in ancient time to a dean and chapter and to their successors, or to a parson of a church and his successors, or to any other man of holy church

¹Hargrave and Butler's notes say: "The word which Lord Coke translates 'lessor,' is in the original 'feoffor,' but, as he evidently refers to a lease for lives, for which, before the Statute of Uses, livery of seisin was necessary. such a lease was a feoffment; so that the difference is immaterial."

and to his successors, in frankalmoign, if he had capacity to take such grants or feoffments, &c.

§ 135. And they, which hold in frankalmoign, are bound of right before God to make orisons, prayers, masses, and other divine services, for the souls of their grantor or feoffor, and for the souls of their heirs¹ which are dead, and for the prosperity and good life and good health of their heirs which are alive. And therefore they shall do no fealty to their lord; because that this divine service is better for them before God, than any doing of fealty; and also because that these words (frankalmoign) exclude the lord to have any earthly or temporal service, but to have only divine and spiritual service to be done for him, &c.

§ 136. And if they, which hold their tenements in frankalmoign, will not or fail to do such divine service (as is said) the lord may not distrain them for not doing this, &c., because it is not put in certainty what services they ought to do. But the lord may complain of this to their ordinary or visitor, praying him, that he will lay some punishment and correction for this, and also provide that such negligence be no more done, &c. And the ordinary or visitor of right ought to do this, &c.

§ 137. But if an abbot, or prior, holds of his lord by a certain divine service, in certain to be done, as to sing

¹ Instead of "heirs," Ritso's *Science of the Law*, 115, suggests "ancestors." Hargrave and Butler's notes approve the amendment. Yet the best French texts authorize "heirs," and this appears to be the correct word.

a mass every Friday in the week, for the souls, *ut supra*, or every year at such a day to sing a *placebo et dirige*, &c., or to find a chaplain to sing a mass, &c., or to distribute in alms to an hundred poor men an hundred pence at such a day; in this case, if such divine service be not done, the lord may distrain, &c., because the divine service is put in certain by their tenure, which the abbot or prior ought to do. And in this case the lord shall have fealty, &c., as it seemeth. And such tenure shall not be said to be tenure in frankalmoign, but is called tenure by divine service. For in tenure in frankalmoign no mention is made of any manner of service; for none can hold in frankalmoign, if there be expressed any manner of certain service that he ought to do, &c.

§ 138. Also, if it be demanded, if tenant in frankmarriage shall do fealty to the donor or his heirs before the fourth degree be past, &c., it seemeth that he shall. For he is not like as to this purpose to tenant in frankalmoign; for tenant in frankalmoign by reason of his tenure shall do divine service for his lord, as is said before; and this he is charged to do by the law of holy church, and therefore he is excused and discharged of fealty: but tenant in frankmarriage shall not do for his tenure such service; and if he doth not fealty, he shall not do any manner of service to his lord, neither spiritual nor temporal, which would be inconvenient, and against reason, that a man shall be tenant of an estate of inheritance to another, and yet the lord shall have no manner of service of him. And so it seems he shall do

fealty to his lord before the fourth degree be past. And when he hath done fealty, he hath done all his services.

§ 139. And if an abbot holdeth of his lord in frankalmoign, and the abbot and covent under their common seal alien the same tenements to a secular man in fee simple, in this case the secular man shall do fealty to the lord; because he cannot hold of his lord in frankalmoign. For if the lord should not have fealty of him, he should have no manner of service, which should be inconvenient, where he is lord, and the tenements be holden of him.

§ 140. Also, if a man grant at this day to an abbot, or to a prior, lands or tenements in frankalmoign, these words (frankalmoign) are void; for it is ordained by the statute which is called *Quia Emptores Terrarum*, (which was made anno 18 E. I.) that none may alien nor grant lands or tenements in fee simple to hold of himself. So that if a man seised of certain tenements, which he holdeth of his lord by knight's service, and at this day he, &c., granteth by licence the same tenements to an abbot, &c., in frankalmoign, the abbot shall hold immediately the tenements by knight's service of the same lord of whom his grantor held, and shall not hold of his grantor in frankalmoign, by reason of the same statute. So that none can hold in frankalmoign, unless it be by title of prescription, or by force of a grant made to any of his predecessors before the same statute was made. But the king may give lands or tenements in fee

simple to hold in frankalmoign, or by other services; for he is out of the case of that statute.

§ 141. And note, that none may hold lands or tenements in frankalmoign, but of the grantor, or of his heirs. And therefore it is said, that if there be lord, mesne and tenant, and the tenant is an abbot, which holdeth of his mesne in frankalmoign, if the mesne die without heir, the mesnalty shall come by escheat to the said lord paramount, and the abbot shall then hold immediately of him by fealty only, and shall do to him fealty; because he cannot hold of him in frankalmoign, &c.

§ 142. And note, that where such man of religion holds his tenements of his lord in frankalmoign, his lord is bound by the law to acquit him of every manner of service which any lord paramount will have or demand of him for the same tenements; and if he doth not acquit him, but suffereth him to be distrained, &c., he shall have against his lord a writ of mesne, and shall recover against him his damages and costs of suit, &c.

CHAPTER VII.

HOMAGE ANCESTRAL.

§ 143. Tenant by homage ancestral is, where a tenant holdeth his land of his lord by homage, and the same tenant and his ancestors, whose heir he is, have holden the same land of the same lord and of his ancestors, whose heir the lord is, time out of memory of man, by homage, and have done to them homage. And this is called homage ancestral, by reason of the continuance, which hath been, by title of prescription, in the tenancy in the blood of the tenant, and also in the seigniori in the blood of the lord. And such service of homage ancestral draweth to it warranty, that is to say, that the lord, which is living and hath received the homage of such tenant, ought to warrant his tenant, when he is impleaded of the land holden of him by homage ancestral.

§ 144. And also such service by homage ancestral draweth to it acquittal, *scil.* that the lord ought to acquit the tenant against all other lords paramount of every manner of service.

§ 145. And it is said, that if such tenant be impleaded by a *præcipe quòd reddat, &c.*, and vouch to warranty his lord, who cometh in by process, and demands of the

tenant what he hath to bind him to warranty, and he sheweth, how he and his ancestors, whose heir he is, have holden their land of the vouchee and of his ancestors time out of mind of man; and if the lord, which is vouched, hath not received homage of the tenant, nor of any of his ancestors, the lord (if he will) may disclaim in the seigniory, and so oust the tenant of his warranty. But if the lord, who is vouched, hath received homage of the tenant, or of any of his ancestors, then he shall not disclaim, but he is bound by the law to warrant the tenant; and then if the tenant loseth his land in default of the vouchee, he shall recover in value against the vouchee of the lands and tenements, which the vouchee had at the time of the voucher, or any time after.

§ 146. And it is to be understood, that in every case where the lord may disclaim in his seigniory by the law, and of this he will disclaim in a court of record, his seigniory is extinct, and the tenant shall hold of the lord next paramount to the lord which so disclaimeth. But if an abbot or prior be vouched by force of homage ancestral, &c., albeit that he never took homage, &c., yet he cannot disclaim in this case, nor in any other case; for they cannot take away or divest a thing in fee, which hath been vested in their house.

§ 147. Also, if a man, which holds his land by homage ancestral, alien to another in fee, the alienee shall do homage to his lord: but he holdeth not of his lord by homage ancestral; because the tenancy was not continued in the blood of the ancestors of the alienee; neither shall

the alienee have warranty of the land of his lord; because the continuance of the tenancy in the tenant and to his blood by the alienation is discontinued. And so see, that if the tenant, which holdeth his land of his lord by homage ancestral alieneth in fee, though he taketh an estate again of the alienee in fee, yet he holds the land by homage, but not by homage ancestral.

§ 148. Also, it is said, that if a man holds his land of his lord by homage and fealty, and he hath done homage and fealty to his lord, and the lord hath issue a son, and dies, and the seigniory descendeth to the son; in this case the tenant, which did homage to the father, shall not do homage to the son; because that when a tenant hath once done homage to his lord, he is excused for term of his life to do homage to any other heir of the lord. But yet he shall do fealty to the son and heir of the lord, although he did fealty to his father.

§ 149. Also, if the lord, after the homage done unto him by the tenant, grant the service of his tenant by deed to another in fee, and the tenant attorneth, &c., the tenant shall not be compelled to do homage. But he shall do fealty, although he did fealty before to the grantor; for fealty is incident to every attornment of the tenant, when the seigniory is granted. But if any man be seised of a manor, and another holds of him the land, as of the manor aforesaid by homage, which tenant hath done homage to his lord who is seised of the manor, if afterwards a stranger bringeth a *præcipe quòd reddat* against the lord of the manor, and recovereth the manor

against him, and sues execution; in this case the tenant shall again do homage to him, which recovered the manor, although he had done homage before; because the estate of him, which received the first homage, is defeated by the recovery, and it shall not lie in the power of the tenant to falsify or defeat the recovery which was against his lord. And so see a diversity in this case, where a man cometh to a seignior by recovery, and where he cometh to the same by descent or grant.

§ 150. Also, if a tenant, which ought by his tenure to do his lord homage, cometh to his lord, and saith unto him, Sir, I ought to do homage unto you for the tenements which I hold of you, and I am here ready to do homage to you for the same tenements; and therefore I pray you, that you would now receive the same from me.

§ 151. And if the lord shall then refuse to receive this, then after such refusal the lord cannot distrain the tenant for the homage behind, before the lord requireth the tenant to do homage unto him, and the tenant refuse to do it.

§ 152. Also, a man may hold his land by homage ancestral, and by escuage, or by other knight's service, as well as he may hold his land by homage ancestral in socage.

CHAPTER VIII.

GRAND SERJEANTY.

§ 153. Tenure by grand serjeanty is, where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his army, or to be his marshal, or to carry his sword before him at his coronation, or to be his sewer at his coronation, or his carver, or his butler, or to be one of his chamberlains of the receipt of his exchequer, or to do other like services, &c. And the cause why this service is called grand serjeanty is, for that it is a greater and more worthy service, than the service in the tenure of escuage. For he, which holdeth by escuage, is not limited by his tenure to do any more especial service than any other, which holdeth by escuage, ought to do. But he, which holdeth by grand serjeanty, ought to do some special service to the king, which he, that holds by escuage, ought not to do.

§ 154. Also, if a tenant which holds by escuage dieth, his heir being of full age, if he holdeth by one knight's fee, the heir shall pay but 100s. for relief, as is ordained by the statute of *Magna Charta*, c. 2. But if he which

holdeth of the king by grand serjeanty, dieth, his heir being of full age, the heir shall pay to the king for relief one year's value of the lands or tenements which he holdeth of the king by grand serjeanty, over and besides all charges and reprises. And it is to be understood, that *serjeantia* in Latin is the same *quod servitium*, and so *magna serjeantia* is the same *quod magnum servitium*.

§ 155. Also, they, which hold by escuage, ought to do their service out of the realm; but they, which hold by grand serjeanty, for the most part ought to do their services within the realm.

§ 156. Also, it is said, that in the marches of Scotland some hold of the king by cornage, that is to say, to wind a horn, to give men of the country warning, when they hear that the Scots or other enemies are come or will enter into England; which service is grand serjeanty. But if any tenant hold of any other lord, than of the king, by such service of cornage, this is not grand serjeanty, but it is knight's service; and it draweth to it ward and marriage; for none may hold by grand serjeanty but of the king only.

§ 157. Also, a man may see in anno 11 H. IV. that Cokayne, then Chief Baron of the Exchequer, came into the Common Place,¹ and brought with him the copy of a record in these words. *Talis tenet tantam terram de domino rege per serjeantiam, ad inveniendum unum hominem ad guerram ubicunque infra quatuor maria, &c.* And he demanded, if this were grand serjeanty, or

¹ I.e. Common Pleas.

petit serjeanty. And Hanke then said, that it was grand serjeanty; because he had a service to do by the body of a man, and if he cannot find a man to do the service for him, he himself ought to do it. *Quod alii justiciarii concesserunt.* Then saith Cokayne, Ought the tenant in this case to pay relief to the value of the land by the year? *Ad quod non fuit responsum.*

§ 158. And note, that all which hold of the king by grand serjeanty, hold of the king by knight's service; and the king for this shall have ward, marriage, and relief; but he shall not have of them escuage, unless they hold of him by escuage.

CHAPTER IX.

PETIT SERJEANTY.

§ 159. Tenure by petit serjeanty is, where a man holds his land of our sovereign lord the king, to yield to him yearly a bow, or a sword, or a dagger, or a knife, or a lance, or a pair of gloves of mail, or a pair of gilt spurs, or an arrow, or divers arrows, or to yield such other small things belonging to war.

§ 160. And such service is but socage in effect; because that such tenant by his tenure ought not to go, nor do any thing, in his proper person, touching the war, but to render and pay yearly certain things to the king, as a man ought to pay a rent.

§ 161. And note, that a man cannot hold by grand serjeanty, nor by petit serjeanty, but of the king, &c.

CHAPTER X.

TENURE IN BURGAGE.

§ 162. Tenure in burgage is, where an ancient borough is, of which the king is lord, and they, that have tenements within the borough, hold of the king their tenements; that every tenant for his tenement ought to pay to the king a certain rent by year, &c. And such tenure is but tenure in socage.

§ 163. And the same manner is, where another lord spiritual or temporal, is lord of such a borough, and the tenants of the tenements in such a borough hold of their lord to pay, each of them yearly, an annual rent.

§ 164. And it is called tenure in burgage, for that the tenements within the borough be holden of the lord of the borough by certain rent, &c. And it is to wit, that the ancient towns called boroughs be the most ancient towns that be within England; for the towns that now be cities or counties, in old time were boroughs, and called boroughs; for of such old towns called boroughs, come the burgesses of the parliament to the parliament, when the king hath summoned his parliament.

§ 165. Also, for the greater part such boroughs have

divers customs and usages, which be not had in other towns. For some boroughs have such a custom, that if a man have issue many sons and dieth, the youngest son shall inherit all the tenements which were his father's within the same borough, as heir unto his father by force of the custom; the which is called borough English.

§ 166. Also, in some boroughs, by custom, the wife shall have for her dower all the tenements which were her husband's.

§ 167. Also, in some boroughs, by the custom, a man may devise by his testament his lands and tenements, which he hath in fee simple within the same borough at the time of his death; and by force of such devise, he to whom such devise is made, after the death of the devisor, may enter into the tenements so to him devised, to have and to hold to him, after the form and effect of the devise, without any livery of seisin thereof to be made to him, &c.

§ 168. Also, though a man may not grant, nor give, his tenements to his wife, during the coverture, for that his wife and he be but one person in the law; yet by such custom he may devise by his testament his tenements to his wife, to have and to hold to her in fee simple, or in fee tail, or for term of life, or years, for that such devise taketh no effect but after the death of the devisor. And if a man at divers times makes divers testaments, and divers devises, &c., yet the last devise and will made by him shall stand, [and the others are void.]

§ 169. Also, by such custom a man may devise by his

testament, that his executors may alien and sell the tenements that he hath in fee simple, for a certain sum, to distribute for his soul. In this case, though the devisor die seised of the tenements, and the tenements descend unto his heir; yet the executors, after the death of the testator, may sell the tenements so devised to them, and put out the heir, and thereof make a feoffment, alienation, and estate, by deed or without deed, to them to whom the sale is made. And so may ye here see a case, where a man may make a lawful estate, and yet he hath naught in the tenements at the time of the estate made. And the cause is, for that the custom and usage is such. For a custom, used upon a certain reasonable cause, depriveth the common law.

§ 170. And note that no custom is to be allowed, but such custom as hath been used by title of prescription, that is to say, from time out of mind. But divers opinions have been of time out of mind, &c., and of title of prescription, which is all one in the law. For some have said, that time out of mind should be said from time of limitation in a writ of right; that is to say, from the time of king Richard the First after the Conquest, as is given by the statute of Westminster the First, for that a writ of right is the most high writ in his nature, that may be. And by such a writ a man may recover his right of the possession of his ancestors of the most ancient time, that any man may by any writ by the law, &c. And in so much that it is given by the said statute, that in a writ of right none shall be heard to demand of

the seisin of his ancestors of longer time than of the time of King Richard aforesaid, therefore this is proved, that continuance of possession, or other customs and usages used from¹ the same time, is the title of prescription, &c. And this is certain. And others have said, that well and truth it is, that seisin and continuance from² the limitation, &c., is a title of prescription, as is aforesaid, and by the cause aforesaid. But they have said, that there is also another title of prescription, that was at the common law before any statute of limitation of writs, &c., and that it was, where a custom, or usage, or other thing, hath been used, for time whereof mind of man runneth not to the contrary. And they have said, that this is proved by the pleading, where a man will plead a title of prescription of custom.³ He shall say, that such custom hath been used from time whereof the memory of men runneth not to the contrary, that is as much to say, when such a matter is pleaded, that no man then alive hath heard any proof of the contrary; nor hath no knowledge to the contrary; and insomuch that such title of prescription was at the common law, and not put out by a statute, *ergo*, it abideth as it was at the common law; and the rather, insomuch that the said limitation

¹ Instead of "from," the translation in Co. Lit. has "after." The change to "from" is suggested in Ritsio's Science of the Law, 110-111. Hargrave and Butler's notes, citing Ritsio, say: "The French word *puis* seems here to signify 'from,' or 'ever since,' and not 'after.'"

² Instead of "from," the translation in Co. Lit. has "after." See the immediately preceding note.

³ { &c. }

of a writ of right¹ is of so long time passed. *Ideo quære de hoc.* And many other customs and usages have such ancient boroughs.

§ 171. Also, every borough is a town, but not *e converso*. More shall be said of custom in the tenure of villenage.

¹ { &c. }

CHAPTER XI.

VILLENAGE.

§ 172. Tenure in villenage is most properly, when a villein holdeth of his lord, to whom he is a villein, certain lands or tenements according to the custom of the manor, or otherwise, at the will of his lord, and to do to his lord villein service; as to carry and recarry the dung of his lord out of the city, or out of his lord's manor,¹ unto the land of his lord,² and to spread the same upon the land, and such like. And some free men hold their tenements according to the custom of certain manors, by such services. And their tenure also is called tenure in villenage, and yet they are not villeins; for no land holden in villenage, or villein land, nor any custom arising out of the land, shall ever make a free man villein. But a villein may make free land to be villein land to his lord. As where a villein purchaseth land in fee simple,

¹ Instead of "out of the scite of his lord's manor," the translation in Co. Lit. has "out of the city, or out of his lord's manor." Coke suggests the change, saying: "This is false printed, for the original is, *hors del scite del mannor*, and so would it be amended in the impressions of the book hereafter."

² { lying fallow, }

or in fee tail, the lord of the villein may enter into the land, and oust the villein and his heirs forever; and after, the lord (if he will) may let the same land to the villein, to hold in villenage.

§ 173. [And note, if a feoffment be made to a certain person or persons in fee, to the use of a villein; or if a villein, with other persons, be infeoffed to the use of the villein; what estate soever that the villein hath in the use, in fee tail, for term of life or years, the lord of the villein may enter into all those lands and tenements, as if the villein had been sole seised of the demesne. And this is given by the statute of *anno* 19 H. VII., c. 15.]¹

§ 174. But if a free man will take any lands or tenements, to hold of his lord by such villein service, viz. to pay a fine to him² for the marriage of his sons or daughters, then he shall pay such fine for the marriage; and notwithstanding though it be the folly of such free man to take in such form lands or tenements to hold of the lord by such bondage, yet this maketh not the free man a villein.³

§ 175. Also, every villein is either a villein by title of prescription, to wit, that he and his ancestors have

¹ Coke says : " This is an addition to Littleton." Hargrave and Butler's notes say : " This section was first introduced in Redman's edition."

² Hargrave and Butler's notes say that in the Rouen edition " the words ' for his marriage or ' come in here."

³ In Lettoun and Machlinia's edition, this section is placed at the end of the chapter.

been villeins time out of mind of man; or he is a villein by his own confession in a court of record.

§ 176. But if a freeman hath divers issues, and afterwards he confesseth himself to be a villein to another in a court of record; yet those issues which he hath before the confession are free, but the issues which he shall have after the confession shall be villeins.

§ 177. Also, if a villein purchase land, and alien the land to another before that the lord enter, then the lord cannot enter; for it shall be adjudged his folly, that he did not enter, when the land was in the hands of the villein. And so it is of goods. If the villein buy goods, and sell or give them to another, before the lord seiseth them, then the lord may not seise the same. But if the lord, before any such sale or gift, cometh into the town, where such goods be, and there, openly amongst the neighbours, claim the goods, and seise part of the goods, in the name of seisin of all the goods [which the villein has or may have,] &c., this is a good seisin in law, and the occupation which the villein hath after such claim in the goods; shall be taken in the right of the lord.

§ 178. But if the king hath a villein, who purchases land, and alien it before the king enter; yet the king may enter, into whose hands soever the land shall come. Or if the villein buyeth goods, and sell them before that the king seiseth them; yet the king may seise these goods, in whose hands soever they be. Because *nullum tempus occurrit regi*.

§ 179. Also, if a man let certain land to another for

term of life, saving to himself the reversion, and a villein purchase of the lessor the reversion; in this case it seemeth, that the lord of the villein may presently come to the land, and claim the reversion as the lord of the said villein, and by this claim the reversion is forthwith in him. For in other form or manner he cannot come to the reversion. For he cannot enter upon the tenant for life. And if he should stay until after the death of the tenant for life, then perchance he should come too late. For peradventure the villein will grant or alien the reversion to another, in the life of the tenant for life, &c.

§ 180. In the same manner it is, where a villein purchases an advowson of a church full of an incumbent, the lord of the villein may come to the said church, and claim the said advowson, and by this claim the advowson is in him. For if he will attend till after the death of the incumbent, and then to present his clerk to the said church, then, in the meantime, the villein may alien the advowson, and so oust the lord of his presentment.

§ 181. Also, there is a villein regardant, and a villein in gross. A villein regardant is, as if a man be seised of a manor to which a villein is regardant, and he which is seised of the said manor, or they whose estate he hath in the same manor, have been seised of the villein and of his ancestors as villeins [and neifes] regardant to the same manor time out of memory of man. And villein in gross is, where a man is seised of a manor whereunto a villein is regardant, and granteth the same

villein by his deed to another, then he is villein in gross, and not regardant.

§ 182. Also, if a man and his ancestors, whose heir he is, have been seised of a villein and of his ancestors as of villeins in gross time out of memory of man, these are villeins in gross.

§ 183. And here note, that such things, which cannot be granted, nor aliened, without deed or fine, a man which will have such things by prescription, cannot otherwise prescribe but in him and in his ancestors, whose heir he is, and not by these words, in him and them whose estate he hath; for that he cannot have their estate without deed or other writing, the which ought to be shewed to the court, if he will take any advantage of it. And because the grant and alienation of a villein in gross lieth not without deed, or other writing, a man cannot prescribe in a villein in gross, without shewing forth a writing, but in himself which claims the villein, and in his ancestors whose heir he is. But of such things, which are regardant or appending to a manor, or to other lands and tenements, a man may prescribe, that he and they whose estate he hath, who were seised of the manor, or of such lands and tenements, &c., have been seised of those things, as regardant or appendant to the manor, or to such lands and tenements¹ time out of mind of man. And the reason is, for that such manor or lands and tenements may pass by alienation without deed, &c.

§ 184. And it is to be understood, that nothing is

¹ { &c. }

named regardant to a manor, &c., but a villein. But certain other things, as an advowson and common of pasture, &c., are named appendant to the manor, or to the lands and tenements, &c.

§ 185. Also, if a man will acknowledge himself in a court of record to be a villein, who was not a villein before, such a one is a villein in gross.

§ 186. Also, a man which is villein is called a villein,¹ and a woman which is villein is called a neife; as a man which is outlawed is called outlawed, and a woman which is outlawed is called waived.

§ 187. Also, if a villein taketh a free woman to wife, and have issue between them, the issues shall be villeins. But if a neife taketh a freeman to her husband, their issue shall be free.

[This is contrary to the civil law; for there it is said, *partus sequitur ventrem*.]²

§ 188. Also, no bastard may be a villein, unless he will acknowledge himself to be a villein in a court of record; for he is in law *quasi nullius filius*, because he cannot be heir to any.

§ 189. Also, every villein is able and free to sue all manner of actions against every person, except against his lord, to whom he is villein. And yet in certain things he may have against his lord an action. For he may have against his lord an action of appeal for the

¹ { or neif }

² Coke says: " This is no part of Littleton."

death of his father, or of his other ancestors, whose heir he is.

§ 190. Also, a neife, that is ravished by her lord, may have an appeal of rape against him.

§ 191. Also, if a villein be made executor to another, and the lord of the villein was indebted to the testator in a certain sum of money, which is not paid; in this case, the villein, as executor of the testator, shall have an action of debt against his lord; because he shall not recover the debt to his own use, but to the use of the testator.

§ 192. Also, the lord may not take out of the possession of such villein, who is executor, the goods of the deceased; and if he doth, the villein as executor shall have an action for the same goods so taken against his lord, and shall recover damages to the use of the testator. But in all such cases it behooveth, that the lord, which is defendant in such actions, maketh protestation, that the plaintiff is his villein; or otherwise the villein shall be enfranchised, although the matter be found for the lord, and against the villein, as it is said.

§ 193. Also, if a villein sueth an action of trespass, or any other action, against his lord in one county; and the lord saith, that he shall not be answered, because he is his villein regardant to his manor in another county; and the plaintiff saith, that he is free, and of a free estate, and not a villein; this shall be tried in the county where the plaintiff hath conceived his action, and not in the county where the manor is: and this is in favour of

liberty. And for this cause a statute was made anno 9 R. II., c. 2, the tenor whereof followeth in this form: Also, for that where many villeins and neifes, as well of great lords as of other men, as well of spiritual as temporal, fly and go into cities, towns, and places franchised, as into the city of London, and other like places, and feign divers suits against their lords, because they would make themselves free by the answer of their lords: it is accorded and assented, that lords nor others shall not be forebarred of their villeins by reason of their answer in law. By force of which statute, if any villein will sue any manner of action to his own use in any county where it is hard to try, against his lord,¹ the lord may chuse whether he will plead, that the plaintiff is his villein, or make protestation that he is his villein, and plead his other matter in bar. And if they be at issue, and the issue be found for the lord, then the villein is a villein, as he was before by force of the same statute. But if the issue be found for the villein, then the villein is free; because that the lord took not at the beginning for his

¹ Commenting upon the obscurity of this passage, Ritso's *Science of the Law*, 107-108, says: "The words mistaken in the original are, 'where it is hard to try against his lord,' instead of 'where he,' the villein, 'is powerful or strong in trial against his lord.'"

Hargrave and Butler's notes, citing Ritso, say: "The literal meaning of these words appears to be, 'where he (the villien) is powerful or strong in trial against his lord,' and not, 'where it is hard to try against his lord.'"

But the sense appears clear if a comma be placed after the word "try."

plea, that the villein was his villein, but took this by protestation, &c.

§ 194. Also, the lord may not maim his villein, for if he maim his villein he shall of that be indicted at the king's suit, and if he be of that attainted, he shall for that make grievous fine and ransom to the king. But it seemeth that the villein shall not have by the law any appeal of mayhem against his lord, for in appeal of mayhem a man shall recover but his damages; and if the villein in that case recover damages against his lord, and hath thereof execution; the lord may take that the villein hath in execution from the villein, and so the recovery is void, &c.

§ 195. Also, if a villein be demandant in an action real, or plaintiff in an action personal against his lord, if the lord will plead in disability of his person, he may not make full¹ defence; but he shall defend but the wrong and the force, and demand the judgment, if he shall be answered and shew his matter forthwith,² how he is villein, and demand judgment if he shall be answered.

¹ Instead of "full," the translation in Co. Lit. has "plain." Hargrave and Butler's notes point out the mistranslation of *pleine* or *pleyn*, saying "It should be 'full.'"

² Instead of "forthwith," the translation in Co. Lit. has "by and by." Ritso's Science of the Law, 111, says: "We have a wrong translation of the word *maintenant*, which does not mean 'by and by,' but 'without delay,' 'presently,' 'forthwith.'" Hargrave and Butler's notes, citing Ritso, say: "The translation of *maintenant*, it should seem, is 'presently,' or 'forthwith,' or 'without delay,' and not 'by and by.'"

§ 196. Also, there are six manner of men, who,¹ if they sue, judgment may be demanded, if they shall be answered, &c. One is, where a villein sueth an action against his lord, as in the case aforesaid.

§ 197. The second is, where a man is outlawed upon the action of debt or trespass, or upon any other action or indictment, the tenant, or the defendant, may shew all the matter of record, and the outlawry, and demand judgment, if he shall be answered; because he is out of the law to sue an action during the time that he is outlawed.

§ 198. The third is an alien, which is born out of the legiance of our sovereign lord the king, if such alien will sue an action real or personal, the tenant or defendant may say, that he was born in such a country, which is out of the king's allegiance, and ask judgment if he shall be answered.

§ 199. The fourth is a man, who by judgment given again him upon writ of *præmunire facias*, &c., is out of the king's protection. If he sue any action, and the tenant or defendant shew all the record against him, he may ask judgment if he shall be answered; for the law and the king's writs be the things, by which a man is protected and holpen; and so, during the time that a man in such case is out of the king's protection, he is out of help and protection by the king's law, or by the king's writ.

¹ Instead of "who," the best French texts authorize "against whom."

§ 200. The fifth is, where a man is entered and professed in religion. If such a one sue an action, the tenant or defendant may shew, that such a one is entered into religion in such a place, into the order of Saint Benet, and is there a monk professed, or into the order of friars, minors or preachers, and is there a brother professed, and so of other orders of religion, &c., and ask judgment if he shall be answered. And the cause is this; that when a man entereth into religion, and is professed, he is dead in the law, and his son, or next cousin incontinent shall inherit him, as well as though he were dead indeed. And when he entereth into religion, he may make his testament, and his executors; and they may have an action of debt due to him before his entry into religion, or any other action that executors may have, as if he were dead indeed. And if that he make no executors when he entereth into religion, then the ordinary may commit the administration of his goods to others, as if he were dead indeed.

§ 201. The sixth is where a man is excommunicated by the law of holy church, and he sueth an action real or personal, the tenant or defendant may plead, that he, that sueth, is excommunicated, and of this it behooves him to shew the bishop's letters under his seal, witnessing the excommunication, and ask judgment; if he shall be answered, &c. But in this case, if the demandant or plaintiff cannot deny it, the writ shall not abate, but the judgment shall be, that the tenant or defendant shall go quit without day, for this, that when the demandant or

plaintiff hath purchased his letters of absolution, and shewed them to the court, he may have a resummons, or a reattachment, upon his original, after the nature of his writ. But in the other five cases the writ shall abate, &c., if the matter shewed may not be gainsaid.

§ 202. Also, if a villein be made a secular chaplain, yet his lord may seise him as his villein, and seise his goods, &c. But it seemeth, that if the villein enter into religion, and is professed, that the lord may not take nor seise him, because he is dead in law; no more than if a free man taketh a nief to his wife, the lord cannot take nor seise the wife of the husband, but his remedy is to have an action against the husband, for that he took his nief to wife without his licence and will, &c. And so may the lord have an action against the sovereign of the house, which taketh and admitteth his villein to be professed in the same house, without the licence and leave of the lord, and he shall recover his damages to the value of the villein. For he which is professed a monk, shall be a monk, and as a monk shall be taken for term of his natural life, unless he be deraigned by the law of holy church. And he is bound by his religion to keep his cloister, &c. And if the lord might take him out of his house, then he should not live as a dead person, nor according to his religion, which should be inconvenient, &c.

§ 203. In the same manner it is, if there be a guardian in chivalry of the body and land of an infant within age, if the infant, when he comes to the age of

fourteen years, entereth into religion, and is professed, the guardian hath no other remedy (as to the wardship of the body) but a writ of ravishment *de gard* against the sovereign of the house. And if any, being of full age, who is cousin and heir of the infant, entereth into the land, the guardian hath no remedy as to the wardship of the land, for that the entry of the heir of the infant is lawful in such case.

§ 204. Also, in many and divers cases, the lord may make manumission and enfranchisement to his villein. Manumission is properly, when the lord makes a deed to his villein to enfranchise him by this word (*manumittere*), which is the same as to put him out of the hands and power of another. And for that, that by such deed the villein is put out of the hands and out of the power of his lord, it is called manumission. And so every manner of enfranchisement made to a villein may be said to be a manumission.

§ 205. Also, if the lord maketh to his villein an obligation of a certain sum of money, or granteth to him by his deed an annuity, or lets to him by his deed lands or tenements for term of years, the villein is enfranchised.

§ 206. Also, if the lord maketh a feoffment to his villein of any lands or tenements, by deed or without deed, in fee simple fee tail, or for term of life [or years,] and delivereth to him seisin, this is an enfranchisement.

§ 207. But if the lord maketh to him a lease of lands or tenements, to hold at will of the lord, by deed or without deed, this is no enfranchisement; for that, that he

hath no manner of certainty or surety of his estate, but the lord may oust him when he will.

§ 208. Also, if the lord sueth against his villein a *præcipe quod reddat*, if he recover, or be nonsuit after appearance, this is a manumission, for that he might lawfully have entered into the land without suit. In the same manner it is, if he sue against his villein an action of debt or account, or of covenant, or of trespass, or of such like, this is an enfranchisement, for that he might imprison the villein, and take his goods without such suit. But if the lord sue his villein by appeal of felony, [where he was indicted of the same before,] this shall not enfranchise the villein, albeit that the matter of appeal be found against the lord, for that the lord could not have the villein to be hanged without such suit. But if the villein were not indicted of the same felony before the appeal sued against him, and afterwards is acquitted of this felony, so as he recover damages against his lord for the false appeal, then the villein is enfranchised, because of the judgment of damages to be given unto him against his lord. And many other cases and matters there be, by which a villein may be enfranchised against his lord, &c. [But inquire of them.]

§ 209. Also, if the lord of a manor will prescribe, that there hath been a custom within his manor time out of mind of man, that every tenant within the same manor, who marrieth his daughter to any man without licence of the lord of the manor, shall make fine¹ and

¹ Lettoun and Machlinia's edition adds "at the will of the lord."

have made fine to the lord of the manor for the time being, this prescription is void. For none ought to make such fine but only villeins. For every free man may freely marry his daughter to whom it pleaseth him and his daughter. And for that this prescription is against reason, such prescription is void.

§ 210. But in the county of Kent, where lands and tenements are holden in gravel-kind, there, where, by the custom and use out of mind of man, the issues male ought equally to inherit, this custom is allowable, because it standeth with some reason: for every son is as great a gentleman as the eldest son is, and perchance will grow to greater honour and valour, if he hath anything by his ancestors, or otherwise peradventure he would not increase so much, &c.¹

§ 211. Also, where by the custom called Borough English, in some borough, the youngest son shall inherit all the tenements, &c., this custom also stands with some certain reason; because that the youngest son (if he lack father and mother) because of his younger age, may least of all his brethren help himself, &c.

§ 212. But if a man will prescribe, that if any cattle were upon the demesnes of the manor there doing damage, that the lord of the manor for the time being hath

¹ Tomlins points out that the text is confused at this place; and from the various early editions he makes this translation of the concluding lines of the section: "because every son is as great a gentleman as the eldest son, and [by reason of this] to greater honor and valor will increase; and [if he had nothing] by his ancestor, &c., peradventure he would not increase so much, &c."

used to distrain them, and the distress to retain till fine were made to him for the damages, at his will, this prescription is void; because it is against reason, that if wrong be done any man, that he thereof should be his own judge; for by such way, if he had damages but to the value of an halfpenny, he might assess and have therefore 100 pounds, which should be against reason. And so such prescription, or any other prescription used, if it be against reason, this ought not, nor will not be allowed before judges; *quia malus usus abolendus est*.¹

¹ In Lettou and Machlinia's edition, section 174 is placed here.

CHAPTER XII.

RENTS.

§ 213. Three manner of rents there be, that is to say, rent service, rent charge, and rent seck. Rent service is where the tenant holdeth his land of his lord by fealty and certain rent, or by homage fealty and certain rent, or by other services and certain rent. And if rent service at any day, that it ought to be paid, be behind, the lord may distrain for that of common right.

§ 214. And if a man will give lands or tenements to another in the tail, yielding to him certain rent [by the year], he of common right may distrain for the rent behind, though that such gift was made without deed, because that such rent is rent service. In the same manner it is, if a lease be made to a man for life, [or the life of another, rendering to the lessor certain rent,] or for term of years rendering rent.

§ 215. But in such case, where a man upon such a gift or lease will reserve to him a rent service, it behooveth, that the reversion of the lands and tenements be in the donor or lessor. For if a man will make a feoffment in fee, or will give lands in tail, the remainder

over in fee simple, without deed, reserving to him a certain rent, this reservation is void, for that no reversion remains in the donor, and such tenant holds his land immediately of the lord, whom his donor held, &c.

§ 216. And this is by force of the statute of *Quia emptiores terrarum*. For before that statute, if a man had made a feoffment in fee simple, by deed or without deed, yielding to him and to his heirs a certain rent, this was a rent service, and for this he might have distrained of common right; and if there were no reservation of any rent, nor of any service, yet the feoffee held of the feoffor by the same service, as the feoffor did hold over of his lord next paramount.

§ 217. But if a man, by deed indented, at this day maketh such a gift in [fee] tail, the remainder over in fee; or a lease for life, the remainder over in fee; or a feoffment in fee; and by the same indenture he reserveth to him and to his heirs a certain rent, and that if the rent be behind, that it shall be lawful for him and his heirs to distrain, &c., such a rent is a rent charge; because such lands or tenements are charged with such distress by force of the writing only, and not of common right. And if such a man, upon a deed indented, reserve to him and to his heirs a certain rent, without any such clause put in the deed, that he may distrain, then such rent is rent seck; for that he cannot come to have the rent, if it be denied, by way of distress; and if in this case he were never seised of the rent, he is without remedy, as shall be said hereafter.

§ 218. Also, if a man seised of certain land grant, by a deed poll, or by indenture, a yearly rent to be issuing out of the same land, to another in fee, or in fee tail, or for term of life, &c., with a clause of distress, &c., then this is a rent charge; and if the grant be without clause of distress, then it is a rent seck. And note, that rent seck *idem est quod redditus siccus*; for that no distress is incident unto it.

§ 219. Also, if a man grant by his deed a rent charge to another, and the rent is behind, the grantee may chuse, whether he will sue a writ of annuity for this, against the grantor, or wistrain for the rent behind, and the distress detain until he be paid. But he cannot do, or have, both together, &c. For if he recovers by a writ of annuity, then the land is discharged of the distress, &c. And if hed oth not sue a writ of annuity, but distrain for the arrearages, and the tenant sueth his replevin, and then the grantee avow the taking of the distress in the land in a court of record, then is the land charged, and the person of the grantor discharged of the action of annuity.

§ 220. Also, if a man would that another should have a rent charge issuing out of his land, but would not that his person be charged in any manner by a writ of annuity, then he may have such a clause in the end of his deed: *Provided always, that this present writing, nor any thing therein specified, shall any way extend to charge my person by a writ or an action of annuity, but only to charge my lands and tenements with the yearly*

rent aforesaid, &c. Then the land is charged, and the person of the grantor discharged.

§ 221. Also, if one make a deed in this manner, that if A. of B.¹ be not yearly paid at the feast of Christmas for term of his life 20s. of lawful money, that then it shall be lawful for the said A. of B. to distrain for this in the manor of F. &c. this is a good rent charge; because the manor is charged with the rent by way of distress,² and yet the person of him, which makes such deed, is discharged in this case of an action of annuity, because he doth not grant by his deed any annuity to the said A. of B. but granteth only, that he may distrain for such annuity, &c.

§ 222. Also, if a man hath a rent charge to him and to his heirs issuing out of certain land, if he purchase any parcel of this to him and to his heirs, all the rent charge is extinct, and annulled,³ because the rent charge cannot by such manner be apportioned. But if a man, which hath a rent service, purchase parcel of the land

¹ Coke says: "Here wanteth words to precede these, viz., *que il grant al A. de B. &c. que si A. de B. &c.*, as it appeareth in the original." The translation of the passage would then be: "Also, if one make a deed in this manner, that he grants to A. of B. &c., that if A. of B.," &c. Hargrave and Butler's notes say: "The words here stated by Lord Coke to be in the original, are not in Lettou and Machlinia, nor Rouen." Tomlins suggests that Coke refers to some MS. copy.

² { &c. }

³ Instead of "annulled," the translation in Co. Lit. has "the annuity also." This is the result of a misprint in late French texts. The correction is in accordance with the best French texts, and is approved in Hargrave and Butler's notes.

out of which the rent is issuing, this shall not extinguish all, but for the parcel. For a rent service in such case may be apportioned according to the value of the land. But if one holdeth his land of his lord by the service to render to his lord yearly at such a feast a horse, a golden spear,¹ or a clove, [gilliflower,] and such like; if in this case the lord purchase parcel of the land, such service is taken away; because such service cannot be severed nor apportioned.

§ 223. But if a man hold his land of another, by homage, fealty, and escuage, and certain rent, if the lord purchase part of the land, &c., in this case the rent shall be apportioned, as is aforesaid: but yet in this case the homage and fealty abide entire to the lord; for the lord shall have the homage and fealty of his tenant for the rest of the lands and tenements holden of him, as he had before,² because that such services are not yearly services, and cannot be apportioned, but the escuage may and shall be apportioned according to the quantity and rate of the land, &c.

§ 224. Also, if a man hath a rent charge, and his father purchase parcel of the tenements charged in fee, and dieth, and this parcel descends to his son, who hath the rent charge, now this³ charge shall be apportioned according to the value of the land, as is aforesaid of rent

¹ Instead of "golden spear," the best French texts authorize "red hawk."

² { &c. }

³ { rent- }

service; because such portion of the land purchased by the father cometh not to the son by his own fact, but by descent and by course of law.

§ 225. Also, if there be lord and tenant, and the tenant holds of his lord by fealty and certain rent, and the lord grants the rent by his deed to another, &c., reserving the fealty to himself, and the tenant attorns to the grantee of the rent, now this rent is rent seck to the grantee; because the tenements are not holden of the grantee¹ of the rent, but are holden of the lord who reserved to him the fealty.

§ 226. In the same manner, where a man holds his land by homage fealty and certain rent, if the lord grant the rent, saving to him the homage such rent after such grant is rent seck. But there where lands are holden by homage fealty and certain rent, if the lord will grant by his deed the homage of his tenant to another, saving to him the remnant of his services, and the tenant attorn to him according to the form of the grant; in this case the tenant shall hold his land of the grantee, and the lord who granted the homage shall have but the rent as a rent seck, and shall never distrain for the rent,² because that homage nor fealty nor escuage cannot be said seck, for no such service may be said seck. For he, which hath or ought to have homage fealty or escuage of

¹ Instead of "grantee," the translation in Co. Lit. has "grantor." This is the result of a misprint in late French texts. Hargrave and Butler's notes approve the amendment.

² Here Lettou and Machlinia's edition adds: "because that fealty cannot be severed from homage, and."

his land, may by common right distrain for it, if it be behind; for homage fealty and escuage are services, by which lands or tenements are holden, &c., and are such services as in no manner can be taken but as services, &c.

§ 227. But otherwise it is of a rent, which was once rent service; because when it is severed by the grant of the lord from the other services, it cannot be said rent service, for that it hath not fealty unto it, which is incident to every manner of rent service; and therefore it is called rent seek. [And the lord cannot grant such a rent with a distress, as it is said.]

§ 228. Also, if a man let to another lands for term of life, reserving to him certain rent, if he grant the rent to another by his deed, saving to him the reversion of the land so letten, &c., such rent is but a rent seek; because that the grantee hath¹ nothing in the reversion of the land, &c. But if he grant the reversion of the land to another for term of life, and the tenant attorn, &c., then hath the grantee the rent as a rent service; for that he hath the reversion for term of life.

§ 229. And so it is to be intended, that if a man give lands or tenements in tail, yielding to him and to his heirs a certain rent, or letteth land for term of life

¹ Instead of "hath," the translation in Co. Lit. has "had." Ritso's Science of the Law, 111, says: "Instead of 'because the grantee had nothing,' &c., which makes the passage obscure and unintelligible, we should read 'because the grantee hath nothing,' &c." Hargrave and Butler's notes, citing Ritso, say: "The word 'had' appears to be here inserted for 'hath.'"

rendering a certain rent, if he grant the reversion to another, &c., and the tenant attorn, all the rent and service pass by this word (reversion) because that such rent and service in such case are incident to the reversion, and pass by the grant of the reversion. But albeit that he granteth the rent to another, the reversion does not pass by such grant, &c.

§ 230. [So note the diversity. And so it is holden P. 21 E. IV. But it is adjudged 26 of the Book of Assises, where the services of tenant in tail were granted, that this was a good grant, notwithstanding that the reversion remain.]¹

§ 231. Also, if there be lord, mesne and tenant, and the tenant holdeth of the mesne by the service of five shillings, and the mesne holdeth over by the service of twelve pence, if the lord paramount purchase the tenancy in fee, then the service of the mesnalty is extinct; because that when the lord paramount hath the tenancy, he holdeth of his lord next paramount to him, and if he should hold this of him which was mesne, then he should hold the same tenancy immediately of divers lords by divers services, which should be inconvenient, and the law will sooner suffer a mischief than an inconvenience, and therefore the seigniority of the mesnalty is extinct.

§ 232. But in as much as the tenant holds of the mesne by five shillings, and the mesne hold but by twelve pence, so as he hath more in advantage by four shillings, than he pays to his lord, he shall have the said four shil-

Coke says : "This is added to Littleton."

lings as a rent seck yearly of the lord which purchased the tenancy.

§ 233. Also, if a man which hath a rent seck, be once seised of any parcel of the rent, and after the tenant will not pay the rent behind, this is his remedy. He ought to go by himself or by others to the lands or tenements out of which the rent is issuing, and there demand the arrearages of the rent; and if the tenant deny to pay it, this denial is a disseisin [of the rent]. Also, if the tenant be not then ready to pay it, this is a denial, which is a disseisin [of the rent]. Also if the tenant, nor any other man, be remaining upon the lands or tenements to pay the rent when he demandeth the arrearages, this is a denial in law, and a disseisin in deed, and of such disseisins he may have an assise of *novel disseisin* against the tenant, and shall recover the seisin of the rent, and his arrearages and his damages, and the costs of his writ and of his plea, &c. And if after such recovery [and execution had,] the rent be again denied unto him, then he shall have a redisseisin, and shall recover his double damages, &c.

§ 234. And *memorandum*, that this name assise is *nomen equivocum*; for sometimes it is taken for a jury, for the beginning of the record of an assise of *novel disseisin* beginneth thus: *assisa venit recognitura*, &c., which is the same as *jurata venit recognitura*. And the reason is, for that by the writ of assise it is commanded to the sheriff, *quòd faceret duodecim liberos*, &c., *legales homines de vicineto*, &c., *videre tenementum illud, et*

nomina illorum inbreviare, et quòd summoneat eos per bonos summonitores, quòd sint coram justiciariis, &c., parati inde facere recognitionem, &c. And because that, by such an original, a pannel by force of the same writ ought to be returned, &c., it is said in the beginning of the record in the assise, *assisa venit recognitura, &c.* Also, in a writ of right, it is commonly said that the tenant may put himself on God and the great assise. Also there is a writ in the Register, which is called a writ *de magnâ assisâ cligendâ*. So as this is well proved, that this name assise sometimes is taken for a jury, and sometimes it is taken for the whole writ of assise; and according to this purpose it is most properly and most commonly taken, as an assise of *novel disseisin* is taken for the whole writ of assise of *novel disseisin*. And in the same manner an assise of common of pasture is taken for the whole writ of assise of common of pasture, and assise of *mort d'ancestor* is taken for the whole writ of assise of *mort d'ancestor*, and assise of *darrein presentment* is taken for the whole writ of *darrein presentment*. But it seems, that the reason why such writs at the beginning were called assises was, for that by every such writ it is commanded to the sheriff, *quòd summoneat 12*, which is as much to say, that he ought to summon a jury. And sometimes assise is taken for an ordinance, to wit, to put certain things into a certain rule and disposition, as an ordinance, which is called¹ *assisa panis et cervisiæ*.

¹ { among the ancient statutes }

§ 235. Also, if there be lord and tenant, and the lord granteth the rent of his tenant by deed to another, saving to him the other services, and the tenant attorneth, that is a rent seck, as it is aforesaid. But if the rent be denied him at the next day of payment, he hath no remedy, because that he had not thereof any possession. But if the tenant when he attorneth to the grantee, or afterwards, will give a penny or a halfpenny to the grantee in name of seisin of rent, then if after at the next day of payment the rent be denied him, he shall have an assise of *novel disseisin*. And so it is if a man grant by his deed a yearly rent issuing out of his land to another, &c., if the grantor then or after pay to the grantee a penny, or an halfpenny, in the name of seisin of the rent, then, if after the next day of payment the rent be denied, the grantee may have an assise, or else not, &c.

§ 236. Also, of rent seck a man may have an assise of *mort d' ancestor*, a writ of *ayel* or *cosinage*, and all other manner of actions real, as the case lieth, as he may have of any other rent.

§ 237. Also, there be three causes of disseisin of rent service, that is to say, rescous, replevin, and enclosure. Rescous is, when the lord distraineth in the land holden of him for his rent behind, if the distress be rescued from him, or if the lord come upon the land, and will distrain, and the tenant or another man will not suffer him, &c. Replevin is, when the lord hath distrained, and replevin is made of the distress by writ or by plaint. Enclosure is, if the lands and tenements be so enclosed, that the

lord may not come within the lands and tenements for to distrain. And the cause, why such things so done be disseisins made to the lord, is for this, that by such things the lord is disturbed of the means by which he ought to have come to his rent [*scil.* of the distress.]

§ 238. And there be four causes of disseisin of a rent charge; *scil.* rescous, replevin, inclosure, and denial; for denial is a recission of a rent charge, as is said before of a rent seck.

§ 239. And there be two causes of disseisin of a rent seck, that is to say, denial and inclosure.

§ 240. And it seemeth, that there is another cause of disseisin of all the three services aforesaid; that is, if the lord is going to the land holden of him for to distrain for the rent behind, and the tenant hearing this encountreth with him, and forestalleth him the way with force and arms, or menaceth him in such form that he dare not come to the land to distrain for his rent behind for doubt of death, or bodily hurt, this is a disseisin, for that the lord is disturbed of the means whereby he ought to come to his rent. And so it is, if, by such forestalling or menacing, he that hath rent charge or rent seck is forestalled, or dare not come to the land to ask the rent behind, &c.

BOOK THE THIRD.

CHAPTER I.

PARCENEERS.

§ 241. PARCENEERS are of two sorts, to wit, parceners according to the course of the common law, and parceners according to the custom. Parceners after the course of the common law are, where a man, or woman seized of certain lands or tenements in fee simple or in tail, hath no issue but daughters, and dieth, and the tenements descend to the issues,¹ and the daughters enter into the lands or tenements so descended to them, then they are called parceners, and be but one heir to their ancestor.² And they are called parceners; because by

¹ Instead of "issues," the best French texts authorize "daughters."

² Tomlins says : " The ordinary copies read this passage thus : *et quant a fies els sont forsque un heire a lour ancestor* : upon which Sir Edward Coke remarks : ' This is false printed ; for the original is, *et quanque fies els sont, els sont parceners, et sont forsque uu heire a lour auncestor* ' ; and the three earliest printed copies are, with the exception of *fount* (make), for *sount* (are), in accordance with this corrected reading. Rastell's translation reads, ' then they be called parceners, and be but one heir to their ancestor,' which agrees literally with Redman and Berthelet."

the writ, which is called *breve de participatione faciendâ*¹ the law will constrain them, that partition shall be made among them. And if there be two daughters to whom the land descendeth, then they be called two parceners; and if there be three daughters, they be called three parceners; and four daughters, four parceners; and so forth.

§ 242. Also, if a man seised of tenements in fee simple or in fee tail dieth without issue of his body begotten, and the tenements descend to his sisters, they are parceners, as is aforesaid. And in the same manner, where he hath no sisters, but the lands descend to his aunts, [they are parceners,] &c. But if a man hath but one daughter, she shall not be called parcener, but she is called daughter and heir, &c.

§ 243. And it is to be understood, that partition may be made in divers manners. One is, when they agree to make partition, and do make partition of the tenements; as if there be two parceners to divide between them the tenements in two parts, each part by itself in severalty and of equal value; and if there be three parceners, to divide the tenements in three parts by itself in severalty, &c.

§ 244. Another partition there is, viz. to choose, by agreement between themselves, certain of their friends, to make partition of the lands or tenements in form

¹ Coke says: "This is false printed, and should be *de partitione facienda*." Tomlins says: "However, in the three earliest editions it is printed *participacione*."

aforesaid. And in these cases, after such partition, the eldest daughter shall choose first one of the parts so divided, which she will have for her part, and then the second daughter next after her another part, and then the third sister another part, then the fourth another part, &c., if so be that there be more sisters, &c., unless it be otherwise agreed between them. For it may be agreed between them, that one shall have such tenements, &c., without any primer¹ election.

§ 245. And the part which the eldest sister hath, is called in Latin *enitia pars*. But if the parceners agree, that the eldest sister shall make partition of the tenements in manner aforesaid, and if she do this, then it is said, that the eldest sister shall choose last for her part, and after every one of her sisters, [&c.]

§ 246. Another partition or allotment is, as if there be four parceners, and after partition of the lands be made, every part of the land by itself is written in a little scroll, and is covered all in wax in manner of a little ball, so as none may see the scroll, and then the four balls of wax are put in a hat, to be kept in the hands of an indifferent man, and then the eldest daughter shall first put her hand into the hat, and take a ball of wax with the scroll within the same ball for her part, and then the second sister shall put her hand into the hat and take another, the third sister the third ball, and the fourth sister the fourth ball, &c., and in this case every one of them ought to stand to their chance and allotment.

¹ *I.e.* first.

§ 247. Also, there is another partition. As if there be four parceners, and they will not agree to a partition to be made between them, then the one may have a writ of *partitione faciendâ* against the other three, or two of them may have a writ of *partitione faciendâ* against the other two, or three of them may have a writ of *partitione faciendâ* against the fourth, at their election.

§ 248. And when judgment shall be given upon this writ, the judgment shall be thus; that partition shall be made between the parties, and that the sheriff in his proper person shall go to the lands and tenements, &c., and that he, by the oath of twelve lawful men of his bailiwick, &c., shall make partition between the parties, and that one part of the lands and tenements shall be assigned to the plaintiff or to one of the plaintiffs, and another part to another parcener, &c., not making mention in the judgment of the eldest sister more than of the youngest.

§ 249. And of the partition which the sheriff hath so made, he shall give notice to the justices¹ under his seal, and the seals of every of the twelve, &c. And so in this case you may see, that the eldest sister shall not have the first election, but the sheriff shall assign to her, her part, which she shall have, &c. And it may be that the sheriff will assign first one part to the youngest, &c., and last to the eldest, &c.

§ 250. And note, that partition by agreement be-

¹ { &c. }

tween parceners may be made by law between them, as well by parol without deed, as by deed.

§ 251. Also, if two meases descend to two parceners, and the one mease is worth twenty shillings per annum, and the other but ten shillings per annum, in this case partition may be made between them in this manner; to wit, the one parcener to have the one mease, and the other parcener the other mease; and she, which hath the mease worth twenty shillings per annum, and her heirs, shall pay a yearly rent of five shillings, issuing out of the same mease, to the other parcener and to her heirs for ever, because each of them should have equality in value.

§ 252. And such partition made by parol is good enough; and that parcener, who shall have the rent, and his heirs, may distrain of common right for the rent in the said mease worth twenty shillings, if the rent of five shillings be behind at any time, in whose hands soever the same mease shall come, although there never were any writing of this made between them for such a rent.

§ 253. In the same manner it is of all manner of lands and tenements, &c., where such rent is reserved to one or to divers parceners upon such partition, &c. But such rent is not rent service, but a rent charge of common right had and reserved for equality of partition.¹

§ 254. And note, that none are called parceners by the common law, but females, or the heirs of females, which come to lands or tenements by descent; for if

¹ { &c. }

sisters purchase lands or tenements, of this they are called joint-tenants, and not of parceners.

§ 255. Also, if two parceners of land in fee simple make partition between themselves, and the part of the one valueth more than the part of the other, if they were at the time of the partition of full age, *sc.* of twenty-one years, then the partition shall always remain, and be never defeated. But if the tenements (whereof they make partition, be to them in fee tail, and the part of the one is better in yearly value than the part of the other, albeit they be concluded during their lives to defeat the partition; yet if the parcener, which hath the lesser part in value, hath issue and die, the issue may disagree to the partition, and enter and occupy in common the other part which was allotted to her aunt, and so the other¹ may enter and occupy in common the other part allotted to her sister, &c., as if no partition had been made.

§ 256. Also, if two parceners of lands in fee take husbands, and they and their husbands make partition between them, if the part of the one be less in value than the part of the other, during the lives of their husbands the partition shall stand in its force. But albeit it shall during the lives of their husbands, yet after the death of the husband, that woman which hath the lesser part may enter into her sister's part as is aforesaid, and shall defeat the partition.

¹ Instead of "other," the best French texts authorize "aunt."

§ 257. But if the partition made between the husbands¹ were thus, that each part at the time of the allotment made was of equal yearly value, then it cannot afterwards be defeated in such cases.

§ 258. Also, if two coparceners be, and the youngest being within the age of twenty-one years, partition is made between them, so as the part which is allotted to the youngest is of less value than the part of the other, in this case the youngest, during the time of her nonage, and also when she cometh to full age, *scil.* of twenty-one years, may enter into the part allotted to her sister, and shall defeat the partition. But let such parcener take heed when she comes to her full age, that she taketh not to her own use all the profits of the lands or tenements which were allotted unto her; for then she agrees to the partition at such age, in which case the partition shall stand and remain in its force. But peradventure she may take the profits of the moiety leaving the profits of the other moiety to her sister.²

§ 259. And it is to be understood, that when it is said, that males or females be of full age, this shall be intended of the age of twenty-one years; for if before such age any deed or feoffment, grant, release, confirmation, obligation, or other writing, be made by any of them, &c., or if any within such age be bailiff or receiver to any man, &c., all serve for nothing, and may be

¹ Instead of "husbands," the best French texts authorize "them."

² { &c. }

avoided. Also a man before the said age shall not be sworn in an inquest, [&c.]

§ 260. Also if lands or tenements be given to a man in tail, who hath as much land in fee simple, and hath issue two daughters and die, and his two daughters make partition between them, so as the land in fee simple is allotted to the younger daughter in allowance for the lands and¹ tenements in tail, allotted to the elder daughter, if, after such partition made, the younger daughter alieneth her land in fee simple to another in fee, and hath issue a son or daughter and dies, the issue may enter into the lands in tail and hold and occupy them in purparty with her aunt. And this is for two causes. One is, for that the issue can have no remedy for the land sold by the mother, because the land was to her in fee simple; and in as much as she is one of the heirs in tail, and hath no recompence of that which belongeth to her of the lands in tail, it is reason that she hath her portion of the lands tailed, and namely when such partition doth not make any discontinuance.²

[But the contrary is holden M. 10 H. VI., *scil.* that the heir may not enter upon the parcener who hath the entailed land, but is put to a *formendon*.]³

¹ Instead of "lands and," the best French texts authorize "other."

² { of the tail, as will be said hereafter in the chapter of Discontinuanee. }

³ Coke says: "This is no part of Littleton, and is contrary to law, as appeareth by Littleton himself."

CHAPTER II.

PARCENERS BY CUSTOM.

§ 265. Parceners by the custom are, where a man seised in fee simple, or in fee tail, of lands or tenements which are of the tenure called gavelkind within the county of Kent, and hath issue divers sons and die, such lands or tenements shall descend to all the sons by the custom, and they shall equally inherit and make partition by the custom, as females shall do, and a writ of partition lieth in this case as between females. But it behoveth in the declaration to make mention of the custom. Also such custom is in other places of England, and also such custom is in North Wales, &c.

§ 266. Also, there is another partition, which is of another nature and of another form than any of the partitions aforesaid be. As if a man seised of certain lands in fee simple hath issue two daughters, and the eldest is married, and the father giveth part of his lands to the husband with his daughter in frankmarriage, and dieth seised of the remnant, the which remnant is of a greater yearly value than the lands given in frankmarriage.

§ 267. In this case, neither the husband nor wife, shall have any thing for their purparty of the said rem-

nant, unless they will put their lands given in frankmarriage in hotchpot, with the remnant of the land with her sister. And if they will not do so, then the youngest may hold and occupy the same remnant, and take the profits only to herself. And it seemeth, that this word (hotchpot) is in English a pudding; for in this pudding is not commonly put one thing alone, but one thing with other things together. And therefore it behoveth in this case to put the lands given in frankmarriage with the other lands in hotchpot, if the husband and wife will have any part in the other lands.

§ 268. And this term (hotchpot) is but a term similitudinary, and is as much to say, as to put the lands in frankmarriage, and the other lands in fee simple together; and this is for this intent, to know the value of all the lands, *scil.* of the lands given in frankmarriage, and of the remnant which were not given, and then partition shall be made in form following. As, put the case, that a man be seised of thirty acres of lands in fee simple, every acre of the value of twelve pence by the year, and that he hath issue two daughters, and the one is covert baron, and the father gives ten acres of the thirty acres to the husband with his daughter in frankmarriage, and dieth seised of the remnant, then the other sister shall enter into the remnant, viz. into the twenty acres, and shall occupy them to her own use, unless the husband and his wife will put the ten acres given in frankmarriage with the twenty acres in hotchpot, that is to say together; and then when the value of every acre is

known, to wit, what every acre valueth by the year, [and it is assessed or agreed between them, that every acre is worth by the year]¹ twelve pence, then the partition shall be made in this manner, viz. the husband and wife shall have, besides the ten acres given to them in frankmarriage, five acres in severalty of the twenty acres, and the other sister shall have the remnant, *scil.* fifteen acres of the twenty acres for her purparty, so as accounting the ten acres which the baron and feme have by the gift in frankmarriage, and the other five acres of the twenty acres, the husband and wife have as much in yearly value as the other sister.

§ 269. And so always upon such partition the lands given in frankmarriage remain to the donees and to their heirs according to the form of the gift: for if the other parcener should have any of that which is given in frankmarriage, of this would ensue an inconvenience and a thing against reason, which the law will not suffer. And the reason, why the lands given in frankmarriage shall be put in hotchpot, is this. When a man giveth lands or tenements in frankmarriage with his daughter, or with his other cousin, it is intended by the law, that such gift made by this word (frankmarriage) is an advancement, and for advancement of his daughter, or of his cousin, and namely, when the donor and his heirs shall have no

¹ Tomlins says: "In Lettou and Machlinia, Rouen, Redman, Berthelet, and Rastell's translation, the words within brackets do not appear. Machlinia and all the copies by Tottyl from 1534 retain them."

rent nor service of them, but fealty, until the fourth degree be past. And for this cause the law is, that she shall have nothing of the other lands or tenements descended to the other parcener, &c., unless she will put the lands given in frankmarriage in hotchpot, as is said. And if she will not put the lands given in frankmarriage in hotchpot, then she shall have nothing of the remnant, because it shall be intended by the law, that she is sufficiently advanced, to which advancement she agreeth and holds herself content.

§ 270. The same law is between the heirs of the donees in frankmarriage, and the other parceners, &c., if the donees in frankmarriage die before their ancestor, or before such partition, &c., as to put in hotchpot, &c.¹

§ 271. And note, that gifts in frankmarriage were by the common law before the statute of Westminster II., and have been always since used and continued, &c.²

§ 272. Also, such putting in hotchpot, &c., is where

¹Tomlins, following the text in the Lettou and Machlinia, Machlinia, and Rouen editions, translates this section thus: "And the same law is, in this matter, between the donees in frankmarriage and the other parceners, as to putting in hotchpot, &c. The same law is between the heirs of the donees in frankmarriage and the other parceners, &c., if the donees in frankmarriage die before their ancestor, or before such partition, &c."

²Tomlins, following the text in the Lettou and Machlinia, Machlinia, and Rouen editions, translates this section thus: "As to putting in hotchpot, &c., of tenements given in frankmarriage, this was by common law before the statute of Westminster II., and hath always since been used and continued, &c."

the other lands or tenements which were not given in frankmarriage descend from the donors in frankmarriage only ; for if the lands shall descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor or other ancestor, and not by the donor, &c., there it is otherwise ; for in such case she, to whom such gift in frankmarriage is made, shall have her part, as if no gift in frankmarriage had been made, because that she was not advanced by them, &c., but by another, &c.

§ 273. Also, if a man be seised of thirty acres of land, every acre of equal annual value, and have issue two daughters as aforesaid, and giveth fifteen acres hereof to the husband with his daughter in frankmarriage, and dies seised of the other fifteen acres, in this case the other sister shall have the fifteen acres so descended to her alone, and the husband and wife shall not in this case put the fifteen acres given to them in frankmarriage into hotchpot ; because the tenements given in frankmarriage are of as great and good yearly value as the other lands descended, &c. For if the lands given in frankmarriage be of equal or of more yearly value than the remnant, in vain and to no purpose shall such tenements given in frankmarriage be put in hotchpot, &c., for that she cannot have any of the other lands descended, &c., for if she should have any parcel of the lands descended, then she shall have more in yearly value than her sister, &c., which the law will not, &c. And as it is spoken in the cases aforesaid, of two daughters or of

two parceners, in the same manner it is in the like case, where there are more sisters or more parceners, according as the case and matter is, &c.

§ 274. And it is to be understood, that lands or tenements given in frankmarriage shall not be put in hotchpot, but where lands descend in fee simple; for of lands descended in fee tail partition shall be made, as if no such gift in frankmarriage had been made.

§ 275. Also, no lands shall be put in hotchpot with other lands, but lands given in frankmarriage only: for if a woman have any other lands or tenements by any other gift in tail, she shall never put such lands so given in hotchpot, but she shall have her purparty of the remnant descended, &c., (*videlicet*) as much as the other parcener shall have of the same remnant.

§ 276. Also, another partition may be made between parceners, which varieth from the partitions aforesaid. As if there be three parceners, and the youngest will have partition, and the other two will not, but will hold in parcenary that which to them belongeth, without partition, in this case, if one part be allotted in severalty to the youngest sister, according to that which she ought to have, then the others may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if, afterwards, the eldest or middle parcener will make partition between them of that which they hold, they may well do this when they please. But where partition shall be made by force of a writ of *partitio facienda*, there it

is otherwise; for there it behoveth, that every parcener have her part in severalty, &c.

More shall be said of parceners in the chapter of Joint-tenants, and also in the chapter of Tenants in Common.

CHAPTER III.

JOINT-TENANTS.

§ 277. Joint-tenants are, as if a man be seised of certain lands or tenements, &c., and infeoffeth two, three, four, or more, to have and to hold to them¹ for

¹ Coke says: "This agreeth not with the original, for it should be *et a lour heires, ou lessa a eux*. . . . The error may easily be perceived by that which is in print, viz., 'by force of which feoffment or lease,' &c.; *ergo* there must be feoffment or lease spoken of, before."

The words suggested—"and to their heirs, or leaseth to them"—are not authorized by Lettou and Machlinia, Machlinia, or Rouen.

Hargrave and Butler's notes say: "I think that his addition seems requisite to the sense intended to be conveyed by Littleton, as well for the reason assigned by Lord Coke, as because otherwise Littleton's description of joint-tenancy might be construed to exclude an estate in fee, which certainly could not be his intention. Probably, therefore, the omission of an estate in fee was an error in the manuscript from which Littleton was first printed. The addition of an estate in fee to Littleton's description of joint-tenancy was first introduced by Rastell in his edition of 1534, which I was first led to observe by a note I was favored with from Mr. Justice Blackstone."

Tomlins says: "Those copies of Redman, which were in Mr. Hargrave's possession, were not seen by him when he wrote this note: for the words which import a fee appear in those copies of Redman, as well as in Berthelet, Middleton, Powel, Smyth, and Tottyl, 1554, which four last seem to be reprints of Berthelet."

term of their lives, or for term of another's life, by force of which feoffment or lease they are seised, these are joint-tenants.

§ 278. Also, if two or three, &c. disseise another of any lands or tenements to their own use, then the disseisors are joint-tenants. But if they disseise another to the use of one of them, then they are not joint-tenants; but he to whose use the disseisin is made is sole tenant, and the others have nothing in the tenancy, but are called coadjutors to the disseisin, &c.

§ 279. And note that disseisin is properly, where a man entereth into any lands or tenements where his entry is not congeable, and ousteth him which hath the freehold, &c.

§ 280. And it is to be understood, that the nature of joint-tenancy is, that he which surviveth shall have only the entire tenancy according to such estate as he hath, if the jointure be continued, &c. As if three joint-tenants be in fee simple, and the one hath issue and dieth, yet they which survive shall have the whole tenements, and the issue shall have nothing. And if the second joint-tenant hath issue and die, yet the third which surviveth shall have the whole tenements to him and to his heirs for ever. But otherwise it is of parceners; for if three parceners be, and before any partition made the one hath issue and dieth, that which to him belongeth shall descend to his issue. And if such parcener die without issue, that which belongs to her shall descend to her co-

heirs, so as they shall have this by descent, and not by survivor, as joint-tenants shall have, &c.

§ 281. And as the survivor holds place between joint-tenants, in the same manner it holdeth place between them which have joint estate or possession with another of a chattel, real or personal. As if a lease of lands or tenements be made to many for term of years, he, which survives of the lessees, shall have the tenements to him only during the term by force of the same lease. And if a horse, or any other chattel personal, be given to many, he which surviveth shall have the horse only.

§ 282. In the same manner it is of debts and duties, &c., for if an obligation be made to many for one debt, he which surviveth shall have the whole debt or duty. And so is it of other covenants and contracts, &c.¹

§ 283. Also, there may be some joint-tenants, which may have a joint estate, and be joint-tenants for term of their lives, and yet have several inheritances. As if lands be given to two men and to the heirs of their two bodies begotten, in this case the donees have a joint estate for term of their two lives, and yet they have several inheritances; for if one of the donees hath issue and die, the other which surviveth shall have the whole by the survivor for term of his life, and if he which surviveth hath also issue and die, then the issue of the one shall have the one moiety, and the issue of the other shall have the other moiety of the land, and they shall hold the land between them in common, and they

are not joint-tenants, but are tenants in common. And the cause, why such donees in such case have a joint estate for term of their lives, is, for that at the beginning the lands were given to them two, which words, without more saying, make a joint estate to them for term of their lives. For if a man will let land to another by deed, or without deed, not making mention what estate he shall have, and of this make livery of seisin, in this case the lessee hath an estate for term of his life; and so in as much as the lands were given to them, they have a joint estate for term of their lives. And the reason why they shall have several inheritances is this, in as much as they cannot by any possibility have an heir between them engendered, as a man and woman may have, &c., the law wills that their estate and inheritance be such as is reasonable, according to the form and effect of the words of the gift, and this is to the heirs which the one shall beget of his body by any of his wives, [and to the heirs which the other shall beget of his body by any of his wives,] &c., so as it behoveth by necessity of reason, that they have several inheritances. And in this case if¹ the issue of one of the donees after the death of the donees die, so that he hath no issue alive of his body begotten, then the donor or his heir may

¹Coke says: "This is mistaken in the imprinting, and varieth from the original, which is, *si l'un donée ou l'issue d'un des donées.*"

The suggested addition—"one donee or"—is not authorized by any early edition.

Tomlins says: "This original might have been a MS. copy."

enter into the moiety as in his reversion, &c., although the other donee hath issue alive, &c. And the reason is, forasmuch as the inheritances be several, &c., the reversion of them in law is several, &c., and the survivor of the issue of the other shall hold no place to have the whole.

§ 284. And as it is said of males, in the same manner it is where land is given to two females, and to the heirs of their two bodies engendered.

§ 285. Also, if lands be given to two and to the heirs of one of them, this is a good jointure, and the one hath a freehold, and the other a fee simple. And if he which hath the fee dieth, he which hath the freehold shall have the entirety by survivor for term of his life. In the same manner it is, where tenements be given to two, and the heirs of the body of one of them engendered, the one hath a freehold, and the other a fee tail, &c.

§ 286. Also, if two joint-tenants be seised of an estate in fee simple, and the one grants a rent charge by his deed to another out of that which belongeth to him, in this case during the life of the grantor the rent charge is effectual; but after his decease the grant of the rent charge is void, as to charge the land, for he which hath the land by survivor shall hold the whole land discharged. And the cause is, for that he which surviveth claimeth and hath the land by the survivor, and hath not, nor can claim anything by descent from his companion, &c. But otherwise it is of parceners, for if there be two parceners of tenements in fee simple, and

before any partition made the one chargeth that which to her belongeth by her deed with a rent charge, &c., and after dieth without issue, by which that which belongeth to her descends to the other parcener, in this case the other parcener shall hold the land charged, &c., because she came to this moiety by descent, as heir, &c.

§ 287. Also, if there be two joint-tenants of land in fee simple within a borough, where lands and tenements are devisable by testament, and if the one of the said two joint-tenants deviseth that which to him belongeth by his testament, &c., and dieth, this devise is void. And the cause is, for that no devise can take effect till after the death of the devisor, and by his death all the land presently cometh by the law to his companion, which surviveth, by the survivor; the which he doth not claim, nor hath any thing in the land by the devisor, but in his own right by the survivor according to the course of law, &c., and for this cause such devise is void. But otherwise it is of parceners seised of tenements devisable in like case of devise, &c., *causâ quâ supra*.

§ 288. Also, it is commonly said, that every joint-tenant is seised of the land which he holdeth jointly *per my et per tout*; and this is as much to say, as he is seised by every parcel and by the whole, &c., and this is true, for in every parcel, and by every parcel, and by all the lands and tenements, he is jointly seised with his companion.

§ 289. Also, if two joint-tenants be seised of certain lands in fee simple, and the one letteth that which to

him belongeth to a stranger for term of forty years, and dieth before the term beginneth, or within the term, in this case after his decease the lessee may enter and occupy the moiety let unto him during the term, &c., although the lessee had never the possession thereof in the life of the lessor, by force of the same lease, &c. And the diversity between the case of a grant of a rent charge [aforesaid, and this case, is this. For in the grant of a rent charge by] a joint-tenant, &c., the tenements remain always as they were before, without this, that any hath any right to have any parcel of the tenements but they themselves, and the tenements are in the same plight as they were before the charge, &c. But where a lease is made by a joint-tenant to another for term of years, &c., presently by force of the lease the lessee hath right in the same land, (*videlicet*) of all that which to the lessor belongeth, and to have this by force of the same lease during his term. And this is the diversity.¹

§ 290. Also, joint-tenants (if they will) may make partition between them, and the partition is good enough; but they shall not be compelled to do this by the law; but if they will make partition of their own will and agreement, the partition shall stand in force.

§ 291. Also, if a joint estate be made of land to a husband and wife and to a third person, in this case the husband and wife have in law in their right but the moiety, [and the third person shall have as much as the husband and wife, viz. the other moiety, &c.] And the

¹ { &c. }

cause is, for that the husband and wife are but one person in law, and are in like case as if an estate be made to two joint-tenants, where the one hath, by force of the jointure, the one moiety in law, and the other the other moiety, [&c.] In the same manner it is where an estate is made to the husband and wife and to two other men, in this case the husband and wife have but the third part, and the other two men the other two parts, &c., *causâ quâ suprà*.

More shall be said of the matter touching joint-tenancy, in the chapter of Tenants in Common, and Tenant by Elegit, and Tenant by Statute Merchant.

CHAPTER IV.

TENANTS IN COMMON.

§ 292. Tenants in common are they which have lands or tenements in fee simple, fee tail, or for term of life, &c., and they have such lands or tenements by several titles, and not by a joint title, and none of them know of this his several, but they ought by the law to occupy these lands or tenements in common, and *pro indiviso* to take the profits in common. And because they come to such lands or tenements by several titles, and not by one joint title, and their occupation and possession shall be by law between them in common, they are called tenants in common. As if a man infeoff two joint-tenants in fee, and the one of them alien that which to him belongeth to another in fee, now the alienee and the other joint-tenant are tenants in common; because they are in, in such tenements by several titles, for the alienee cometh to the moiety by the feoffment of one of the joint-tenants, and the other joint-tenant hath the other moiety by force of the first feoffment made to him and to his companion [&c.] And so they are in by several titles, that is to say, by several feoffments, &c.

§ 293. And it is to be understood, that when it is said in any book that a man is seised in fee, without more saying, it shall be intended, in fee simple; for it shall not be intended by this word (in fee) that a man is seised in fee tail, unless there be added to it this addition, fee tail, &c.

§ 294. Also, if three joint-tenants be, and one of them alien that which to him belongeth to another man in fee, in this case the alienee is tenant in common with the other two joint-tenants: but yet the other two joint-tenants are seised of the two parts [which remain] jointly, and of these two parts the survivor between them two holdeth place, &c.

§ 295. Also, if there be two joint-tenants in fee, and the one giveth that which to him belongeth to another in tail, [and the other giveth that which to him belongs to another in tail,] the donees are tenants in common, &c.

§ 296. But if lands be given to two men, and to the heirs of their two bodies begotten, the donees have a joint estate for term of their lives; and if each of them hath issue and die, their issues shall hold in common, &c. But if lands be given to two abbots, as to the abbot of Westminster and to the abbot of Saint Albans, to have and to hold to them and to their successors, in this case they have presently at the beginning an estate in common, and not a joint estate. And the reason is, that for every abbot or other sovereign of a house of religion, before that he was made abbot or sovereign, &c., was but

as a dead person in law, and when he is made abbot,¹ he is as a man personable in law only to purchase and have lands or tenements or other things to the use of his house, and not to his own proper use, as another secular man may, and therefore at the beginning of their purchase they are tenants in common; and if one of them die, the abbot which surviveth shall not have the whole by survivor, but the successor of the abbot which is dead shall hold the moiety in common with the abbot that surviveth, &c.

§ 297. Also, if lands be given to an abbot and a secular man, to have and to hold to them, viz. to the abbot and his successors, and to the secular man to him and to his heirs, they have an estate in common, *causâ quâ suprâ*.

§ 298. Also, if lands be given to two, to have and to hold, *scil.* the one moiety to the one and to his heirs, and the other moiety to the other and to his heirs, they are tenants in common.²

§ 299. Also, if a man seised of certain lands infeoff another of the moiety of the same land without any speech of assignment or limitation of the same moiety in severalty at the time of the feoffment, then the feoffee and the feoffor shall hold their parts of the land in common.

§ 300. And it is to be understood, that in the same

¹ { &c. }

² Tomlins says: "In Lettou and Machlinia, Machlinia, and Rouen, this section is placed immediately after section. 800."

manner as is aforesaid of tenants in common, of lands or tenements in fee simple, or in fee tail, in the same manner may it be of tenants for term of life. As if two joint-tenants be in fee, and the one letteth to one man that which to him belongeth for term of life, and the other joint-tenant letteth that which to him belongeth to another for term of life, &c., the said two lessees are tenants in common for their lives, &c.

§ 301. Also, if a man let lands to two men for term of their lives, and the one grants all his estate of that which belongeth to him to another, then the other tenant for term of life, and he to whom the grant is made, are tenants in common during the time that both the lessees be alive.

And *memorandum*, that in all other such like cases, although it be not here expressly moved or specified, if they be in like reason, they are in the like law.

§ 302. Also, if there be two joint-tenants in fee, and the one letteth that which to him belongeth to another for term of his life, the tenant for term of life during his life, and the other joint-tenant which did not let, are tenants in common. And upon this case a question may arise; as in such case, admit that the lessor hath issue and die, leaving the other joint-tenant his companion, and leaving the tenant for life, the question may be this, Whether the reversion of the moiety¹ which the lessor hath shall descend to the issue of the lessor, or that the other joint-tenant shall have this reversion by the sur-

¹ { &c. }

vivor? Some have said in this case, that the other joint-tenant shall have this reversion by the survivor; and their reason is this, *scil.* That when the joint-tenants were jointly seised in fee simple, &c., although that the one of them make an estate of that which to him belongeth for term of his life, and although that he hath severed the freehold of this which to him belongs by the lease, yet he hath not severed the fee simple, but the fee simple remains to them jointly as it was before. And so it seemeth to them, that the other joint-tenant which surviveth shall have the reversion by the survivor, &c. And others have said the contrary, and this is their reason, *scilicet.* That when one of the joint-tenants leaseth that which to him belongeth, to another for term of his life, by such lease the freehold is severed from the jointure. And by the same reason the reversion which is depending upon the same freehold is severed from the jointure. Also if the lessor had reserved to him an annual rent upon the lease, the lessor only should have had the rent, &c., the which is a proof, that the reversion is only in him, and that the other hath nothing in the reversion, &c. Also if the tenant for term of life were impleaded, and maketh default, after default, the lessor shall be only received for this, to defend his right, and his companion in this case in no manner shall be received, the which proveth the reversion of the moiety to be only in the lessor: and so by consequent, if the lessor dieth living the lessee for term of life, the reversion shall descend to the heir of the lessor, and shall not come

to the other joint-tenant by the survivor, *Ideo quære*. But in this case if that joint-tenant which hath the freehold hath issue and dies, living the lessor and the lessee, then it seemeth that the same issue shall have this moiety in demesne, and in fee by descent, for that a freehold cannot by nature of jointure be annexed to a reversion, &c. And it is certain, that he which leased was seised of the moiety in his demesne as of fee, and none shall have any jointure in his freehold, therefore this shall descend to his issue, &c. *Sed quære*.

§ 303. But if it be so that the law in this case be such, that if the lessor die living the lessee, and living the other joint-tenant which hath the freehold of the other moiety, that the reversion shall descend to the issue of the lessor, then is the jointure and title which any of them may have by the survivor, and the right of the jointure taken away, and altogether defeated forever. In the same manner it is, if that joint-tenant which hath the freehold die, living the lessor and the lessee, if the law be so as his freehold and fee which he hath in the moiety shall descend to his issue, then the jointure shall be defeated forever.

§ 304. And, if three joint-tenants be, and the one release by his deed to one of his companions all the right which he hath in the land, then hath he to whom the release is made, the third part of the lands by force of the said release, and he and his companion shall hold the other two parts in jointure. And as to the third part which he hath by force of the release, he holdeth that

third part with himself and his companion in common.

§ 305. And it is to be observed, that sometimes a deed of release shall take effect, and enure to put the estate of him which makes the release to him to whom the release is made, as in the case aforesaid, and also, as if a joint estate be made to the husband and wife, and to a third person, and the third person release all his right which he hath¹ to the husband, then hath the husband the moiety which the third had, and the wife hath nothing of this. And if in such case the third release to the wife, not naming the husband in the release, then hath the wife the moiety which the third had, &c., and the husband hath nothing of this but in right of his wife, because that in this case the release shall enure to make an estate to whom the release is made, of all that which belongeth to him which maketh the release, &c.

§ 306. And in some case a release shall enure to put all the right which he who maketh the release hath to him to whom the release is made. As if a man seised of certain tenements is disseised by two disseisors, if the disseisee by his deed release all his right, &c., to one of the disseisors, then he to whom the release is made shall have and hold all the tenements to him alone, and shall oust his companion of every occupation of this. And the reason is, for that the two disseisors were in² against the law, and when one of them happeth the release of him which hath right of entry, &c., this right in such

¹ { &c. }

² { the tenements by wrong by them done }

case shall vest in him to whom the release is made, and he is in like plight as¹ he which hath the right [had entered and] enfeofed him, &c. And the reason is, for that he which before had an estate by wrong, *scilicet*, by disseisin, &c., hath now by the release a rightful estate.²

§ 307. And in some case a release shall enure by way of extinguishment, and in such case such release shall aid the joint-tenant to whom the release was not made, as well as him to whom the release was made. As if a man be disseised, and the disseisor makes a feoffment to two men in fee, if disseisee release by his deed to one of the feoffees, this release shall enure to both the feoffees, for that the feoffees have an estate by the law, *scilicet*, by feoffment, and not by wrong done to any, &c.

§ 308. In the same manner it is, if the disseisor maketh a lease to a man for term of his life, the remainder over to another in fee, if the disseisee release to the tenant for term of life all his right, &c. this release shall enure as well to him in the remainder, as to the tenant for term of life. And the reason is, for that the tenant for life cometh to his estate by course of law, and therefore this release shall enure and take effect by way of extinguishment of the right of him which releaseth, &c. And by this release the tenant for life hath no ampler nor greater estate than he had before the release made him, and the right of him which releaseth is altogether extinct. And inasmuch as this release cannot enlarge

¹ { if }

² { &c. }

the estate of the tenant for life, it is reason that this release shall enure to him in the remainder, &c.

More shall be said of releases in the chapter of Releases.

§ 309. Also, if two parceners be, and the one alieneth that which to her belongeth to another, then the other parcener and the alienee are tenants in common.

§ 310. Also [note, that] tenants in common may be by [title of] prescription, as if the one and his ancestors, or they whose estate he hath in one moiety have holden in common the same moiety with the other tenant which hath the other moiety, and with his ancestors, or with those whose state he had undivided,¹ time out of mind of man. And divers other manners may make and cause men to be tenants in common, which are not here expressed [&c.].

§ 311. Also, in some case tenants in common ought to have of their possession several actions, and in some cases they shall join in one action. For if two tenants in common be, and they be disseised, they must have² two assises, and not one assise; for each of them ought to have one assise of his moiety, &c. And the reason is, for that the tenants in common were seised, &c., by several titles. But otherwise it is of joint-tenants; for if twenty joint-tenants be, and they be disseised, they shall have in all their names but one assise, because they have not³ but one joint title.

¹ { &c. }

² { against the disseisor }

³ Ritso's Science of the Law, 111, says that "instead of 'be-

§ 312. Also, if three joint-tenants be, and one release to one of his fellows all the right which he hath, &c., and after the other two be disseised of the whole, &c., in this case the two others shall have several assises, &c., in this manner, *scil.* they shall have in both their names an assise of the two parts, &c., because the two parts they held jointiy at the time of the disseisin. And as to the third part, he to whom the release was made, ought to have of that an assise in his own name, for that he (as to the same third part) is thereof tenant in common, &c., because he cometh to this third part by force of the release, and not only by force of the jointure.

§ 313. Also, to the suing of actions which touch the realty, there be diversities between parceners which are in by divers descents, and tenants in common. For if a man seised of certain land in fee hath issue two daughters [and dieth, and the daughters enter, &c., and each of them hath issue a son], and die without partition¹ made between them, by which the one moiety descends to the son of the one parcener, and the moiety descends

cause they have not but one joint title;’ we should read, ‘because they have but one joint title;’” and Hargrave and Butler’s notes, citing Ritso, say that “‘not’ should be left out, as this mode of expression, though good in French, does not suit the idiom of the English language.”

Yet double negatives and the like had not become obsolete in Coke’s time, and they are not likely to mislead any reader of Littleton.

¹ The best French texts authorize the following translation of this passage : “ For if two parceners, seised of certain land in fee, have issue two sons and die without partition,” &c.

to the son of the other parcencer, and they enter and occupy in common and be disseised, in this case they shall have in their two names one assise, and not two assises. And the cause is, for that albeit they come in by divers descents, &c., yet they are parceners, and a writ of partition lieth between them. And they are not parceners, having regard or respect only to the seisin and possession of their mothers, but they are parceners rather, having respect to the estate which descended from their grandfather to their mothers, for they cannot be parceners if their mothers were not parceners before, &c. And so in this respect and consideration, *scil.* as to the first descent which was to their mothers, they have a title in parcenary, the which makes them parceners. And also they are but as one heir to their common ancestor, *scil.* to their grandfather, from whom the land descended to their mothers. And for these causes, before partition between them, &c., they shall have one¹ assise, although they come in by several descents.²

§ 314. Also, if there be two tenants in common of certain lands in fee, and they give this land to a man in tail, or let it to one for term of life, rendering to them yearly a certain rent, and a pound of pepper, and a hawk or a horse, and they be seised of this service, and afterwards the whole rent is behind, and they distrain for

• ¹ Instead of "one," the translation in Co. Lit. has "an." Ritso's Science of the Law, 111, suggests the amendment; and Hargrave and Butler's notes, citing Ritso, say that "'an' seems to be here inserted for 'one.'"

² { &c. }

this, and the tenant maketh rescous. In this case as to the rent and pound of pepper they shall have two assises, and as to the hawk or the horse but one assise. And the reason why they shall have two assises as to the rent and pound of pepper is this, insomuch as they were tenants in common in several titles, and when they made a gift in tail, or lease for life, saving to them the reversion, and rendering to them a certain rent, &c., such reservation is incident to their reversion; and for that their reversion is in common, and by several titles, as their possession was before the rent and other things which may be severed, and were reserved unto them upon the gift, or upon the lease, which are incidents by the law to their reversion, such things so reserved were of the nature of the reversion. And in as much as the reversion is to them in common by several titles, it behoveth that the rent and the pound of pepper, which may be severed, be to them in common, and by several titles. And of this they shall have two assises, and each of them in his assise shall make his plaint of the moiety of the rent, and of the moiety of the pound of pepper. But of the hawk or of the horse, which cannot be severed, they shall have but one assise, for a man cannot make a plaint in an assise of the moiety of a hawk, nor of the moiety of a horse, &c. In the same manner it is of other rents and of other services which tenants in common have in gross by divers titles, &c.

§ 315. Also as to actions personals, tenants in common may have such action personals jointly in all their

names, as of trespass, or of offences which concern their tenements in common, as for breaking their houses, breaking their closes, feeding, wasting, and defouling their grass, cutting their woods, for fishing in their piscary, and such like. In this case tenants in common shall have one action jointly, and shall recover jointly their damages, because the action is in the personalty, and not in the realty, [&c.].

§ 316. Also, if two tenants in common make a lease of their tenements to another for term of years, rendering to them a certain rent yearly during the term, if the rent be behind, &c., the tenants in common shall have an action of debt against the lessee, and not divers actions, for that the action is in the personalty.

§ 317. [But in avowry for the said rent they ought to sever, for this is in the realty, as the assise is above.]¹

§ 318. Also, tenants in common may well make partition between them if they will, but they shall not be compelled to make partition by the law; but if they make partition between themselves by their agreement and consent, such partition is good enough, as is adjudged in the Book of Assises.

§ 319. Also, as there be tenants in common of lands and tenements, &c., as aforesaid, in the same manner there be² of chattles reals and personals. As if a lease be made of certain lands to two men for term of twenty

¹ Coke says : "An addition to Littleton, albeit it be consonant to law."

² { possessions and properties }

years, and when they be of this possessed, the one of the lessees grant that which to him belongeth to another during the term, then he to whom the grant is made and the other shall hold and occupy in common.

§ 320. Also, if two¹ have jointly the wardship of the body and land of an infant within age, and the one of them grant to another that which to himself belongeth of the same ward, then the grantee, and the other which did not grant, shall have and hold this in common, &c.

§ 321. In the same manner it is of chattels personals. As if two have jointly,² by gift or buying, a horse or an ox, &c., and the one grant that which to him belongs [of the same horse or ox] to another, the grantee, and the other which did not grant, shall have and possess such chattels personals in common.³ And in such cases, where divers persons have chattels real or personal in common,⁴ and by divers titles, if the one of them dieth, the others which survive shall not have this as survivor, but the executors of him which dieth shall hold and occupy this with them which survive, as their testator did or ought to have done in his lifetime, &c., because that their titles and rights in this were several, &c.

§ 322. Also, in the case aforesaid, as if two have an estate in common for term of years, &c., the one occupy all, and put the other out of possession and occupation,

¹ { joint-tenants }

² Instead of "jointly," the best French texts authorize "joint estate."

³ { &c. }

⁴ { &c. }

he which is put out of occupation shall have against the other a writ of *ejectione firmæ* of the moiety, &c.

§ 323. In the same manner it is where two hold the wardship of lands or tenements during the nonage of an infant, if the one oust the other of his possession, he which is ousted shall have a writ of *ejectment de gard* of the moiety, &c., because that these things are chattels reals, and may be apportioned and severed, &c., but no¹ action of trespass, (*videlicet*) *Quare clausum suum fregit, et herbam suam, &c., conculcavit, et consumpsit, &c., et hujusmodi actiones, &c.*, the one cannot have against the other, for that each of them may enter and occupy in common, &c., *per my et per tout*, the lands and tenements which they hold in common. But if two be possessed of chattels personals in common by divers titles, as of a horse, an ox, or a cow, &c., if the one take the whole to himself out of the possession of the other, the other hath no other remedy but to take this from him who hath done to him the wrong to occupy in common, &c., when he can see his time, &c. In the same manner it is of chattels reals, which cannot be severed, as in the case aforesaid, where two be possessed of the wardship of the body of an infant within age, if the one taketh the infant out of the possession of the other, the other hath no remedy by an action by the law, but to take the infant out of the possession of the other when he sees his time.²

¹ { such }

² { &c. }

§ 324. Also, when a man¹ will shew a feoffment made to him, or a gift in tail, or a lease for life of any lands or tenements, there he shall say by force of which feoffment, gift, or lease, he was seised, &c., but where one will plead a lease or grant made to him of a chattel real or personal, there he shall say by force of which he was possessed, &c.

More shall be said of tenants in common in the chapters of Releases² and Tenant by *Elegit*.

¹ { in pleading }

² { and Confirmations }

CHAPTER V.

ESTATES UPON CONDITION.

§ 325. Estates which men have in lands or tenements [upon condition] are of two sorts, viz. either they have estate upon condition in deed, or upon condition in law, [&c.] Upon condition in deed is, as if a man by deed indented enfeoffs another in fee [simple], reversing to him and his heirs yearly a certain rent, payable at one feast or divers feasts per annum, on condition that if the rent be behind, &c., that it shall be lawful for the feoffor and his heirs into the same lands or tenements to enter, &c.¹ And if it happen the rent to be behind by a week after any day of payment of it, or by a month after any day of payment of it, or by half a year, &c., that then it shall be lawful to the feoffor and his heirs to enter, &c. In these cases, if the rent be not paid at such time, or before such time limited and specified within the condition comprised in the indenture, then may the feoffor or his heirs enter into such lands or tenements, and them in his former estate to have and hold, and the feoffee quite to oust thereof. And it is called an estate upon condi-

¹ { or if land be aliened to another man in fee, rendering unto him certain rent, &c. }

tion, because that the state of the feoffee is defeasible, if the condition be not performed, &c.

§ 326. In the same manner it is, if lands be given in tail, or let for term of life or of years, upon¹ condition, &c.

§ 327. But where a feoffment is made of certain lands reserving a certain rent, [&c.,] upon such condition, that if the rent be behind, that it shall be lawful for the feoffor and his heirs to enter,² and to hold the land until he be satisfied or paid the rent behind, &c., in this case if the rent be behind, and the feoffor or his heirs enter, the feoffee is not altogether excluded from this, but the feoffor shall have and hold the land, and thereof take the profits, until he be satisfied of the rent behind; and when he is satisfied, then may the feoffee reenter into the same land, and hold it as he held it before. For in this case the feoffor shall have the land but in manner as for a distress, until he be satisfied of the rent, &c., though he take the profits in the meantime [to his own use,] &c.

§ 328. Also, divers words (amongst others) there be, which by virtue of themselves make estates upon condition; one is the word *sub conditione*,³ as if A. enfeoff B. of certain land, to have and to hold to the said B. and his heirs, upon condition that the said B. and his heirs

¹ { such }

² { into the land held of them }

³ Instead of "*sub conditione*," the best French texts authorize simply "condition."

do pay or cause to be paid to the aforesaid A. and his heirs yearly such a rent, &c. In this case without any more saying the feoffee hath an estate upon condition.

§ 329. Also, if the words¹ were such, Provided always, that the aforesaid B. do pay or cause to be paid to the aforesaid A. such a rent, &c., or these, So that the said B. do pay or cause to be paid to the said A. such a rent, &c., in these cases without more saying, the feoffee hath but an estate upon condition; so as if he doth not perform the condition, the feoffor and his heirs may enter, &c.

§ 330. Also, there be other words in a deed which cause the tenements to be conditional. As if upon such feoffment a rent be reserved to the feoffor, &c., and afterward [this word] is put into the deed, That if it happen the aforesaid rent to be behind in part or in all,² that then it shall be lawful for the feoffor and his heirs to enter, &c., this is a deed upon condition.

§ 331. But there is a diversity between this word *si contingat*, &c., and the words next aforesaid, &c. For these words, *si contingat*, &c., are nought worth to such a condition, unless it hath these words following, That it shall be lawful for the feoffor and his heirs to enter, &c. But in the cases aforesaid, it is not necessary by the law to put such clause, *scilicet*, that the feoffor and his heirs may enter, &c., because they may do this by

¹ Instead of "words," the best French texts authorize "conditions."

² { &c. }

force of the words aforesaid, for that they contain in themselves¹ a condition, *scilicet*, that the feoffor and his heirs may enter, &c., yet it is commonly used in all such cases aforesaid, to put the² clauses in the deeds, *scilicet*, if the rent be behind, &c., that it shall be lawful to the feoffor and his heirs to enter, &c. And this is well done, for this intent, to declare and express to the common people, who are not learned in the law, of the manner³ and condition of the feoffment, &c. As if a man seised of land⁴ letteth the same land to another by deed indented for term of years, rendering to him a certain rent, it is used to be put into the deed, that if the rent be behind at the day of payment, or by the space of a week or a month, &c., that then it shall be lawful to the lessor to distrain, &c., yet the lessor may distrain of common right for the rent behind, &c., though such words were not put into the deed, &c.

§ 332. Item, if a feoffment be made upon such condition, that if the feoffor pay to the feoffee at a certain day, &c., 40*l.* of money, that then the feoffor may re-enter, &c., in this case the feoffee is called tenant in mortgage, which is as much to say in French as *mortgage*, and in Latin *mortuum vadium*. And it seemeth that the cause why it is called mortgage is, for that it is

¹ { in law }

² Instead of "the," the best French texts authorize "such."

³ Instead of "manner," the best French texts authorize "matter."

⁴ { as of freehold }

doubtful whether the feoffor will¹ pay at the day limited such sum or not: and if he doth not pay, then the land which is put in pledge upon condition for the payment of the money, is taken from him for ever, and so dead [to him upon condition, &c. And if he doth pay the money, then the pledge is dead] as to the tenant, &c.

§ 333. Also, as a man may make a feoffment in fee in mortgage, [so a man may make a gift in tail in mortgage,] and a lease for term of life, or for term of years in mortgage. [And] all such tenants are called tenants in mortgage, according to the estates which they have in the land, &c.

§ 334. Also, if a feoffment be made in mortgage upon condition that the feoffor shall pay such a sum at such a day, &c., as is between them by their deed indented, agreed, and limited, although the feoffor dieth before the day of payment, &c., yet if the heir of the feoffor pay the same sum of money at the same day to the feoffee, or tender to him the money, and the feoffee refuse to receive it, then may the heir enter into the land, and yet the condition is, that if the feoffor shall pay such a sum at such a day, &c., not making mention in the condition of any payment to be made by his heir, but for that the heir hath interest of right in the condition, &c., and the intent was but that the money should be paid at the day assessed, &c., and the feoffee hath no more loss, if it be paid by the heir, than if it were paid by the father, &c., therefore if the heir pay the money, or

Instead of "will," the best French texts authorize "can."

tender the money at the day limited, &c., and the other refuse it, he may enter, &c. But if a stranger of his own head, who hath not any interest, &c., will tender the aforesaid money to the feoffee at the day appointed, the feoffee is not bound to receive it.

§ 335. And be it remembered that in such case, where such tender of the money is made, &c., and the feoffee refuse to receive it, by which the feoffor or his heirs enter, &c., then the feoffee hath no remedy by the common law to have this money, because it shall be counted his own folly that he refused the money, when a lawful tender of it was made unto him.

§ 336. Also, if a feoffment be made on this condition, that if the feoffee pay to the feoffor at such a day between them limited, twenty pounds, then the feoffee shall have the land to him and to his heirs; and if he fail to pay the money at the day appointed, that then it shall be lawful for the feoffor or his heirs to enter, &c., and afterwards, before the day appointed, the feoffee sell the land to another, and of this maketh a feoffment to him, in this case if the second feoffee will tender the sum of money at the day appointed to the feoffor, and the feoffor refuseth the same, &c., then the second feoffee hath an estate in the land clearly without condition. And the reason is, for that the second feoffee hath an interest in the condition for the safeguard of his tenancy. And in this case it seems that if the first feoffee after such sale of the land, will tender the money at the day appointed, &c., to the feoffor, this shall be good enough for

the safeguard of the estate of the second feoffee, because the first feoffee was privy to the condition, and so the tender of either of them two is good enough, &c.

§ 337. Also, if a feoffment be made upon condition, that if the feoffor pay a certain sum of money to the feoffee, then it shall be lawful to the feoffor and his heirs to enter:¹ in this case if the feoffor die before the payment made, and the heir will tender to the feoffee the money, such tender is void, because the time within which this ought to be done is past. For when the condition is, that if the feoffor pay the money to the feoffee, &c., this is as much to say, as if the feoffor during his life pay the money to the feoffee, &c., and when the feoffor dieth, then the time of the tender is past. But otherwise it is where a day of payment is limited, and the feoffor die before the day, then may the heir tender the money as is aforesaid, for that the time of the tender was not past by the death of the feoffor. Also it seemeth, [that] in such case where the feoffor dieth before the day of payment, if the executors of the feoffor tender the money to the feoffee at the day of payment, this tender is good enough; and if the feoffee refuse it, the heirs of the feoffor may enter, &c. And the reason is, for that the executors represent the person of their testator, &c.

§ 338. And note, that in all cases of condition for payment of a certain sum in gross touching lands or tenements, if lawful tender be once refused, he which ought

¹ { &c. }

to tender the money is of this quit, and fully discharged for ever afterwards.

§ 339. Also, if the feoffee in mortgage before the day of payment which should be made to him, makes his executors and die, and his heir entereth into the land as he ought, &c., it seemeth in this case that the feoffor ought to pay the money at the day appointed to the executors, and not to the heir of the feoffee, because the money at the beginning trenched to the feoffee in manner as a duty, and shall be intended that the estate was made by reason of the lending of the money by the feoffee, or for some other duty; and therefore the payment shall not be made to the heir, [as it seemeth, but the words of the condition may be such, as the payment shall be made to the heir]. As if the condition were, that if the feoffor pay to the feoffee or to his heirs such a sum at such a day, &c., there, after the death of the feoffee, if he dieth before the day limited, the payment ought to be made to the heir at the day appointed, &c.

§ 340. Also, upon such case of feoffment in mortgage, a question hath been demanded in what place the feoffor is bound to tender the money to the feoffee at the day appointed, &c. And some have said, upon the land so holden in mortgage, because the condition is depending upon the land. And they have said, that if the feoffor be [upon the land there] ready to pay the money to the feoffee at the day set, and the feoffee be not then there, then the feoffor is quit and excused of the payment of the money, for that no default is in him. But

it seemeth to some that the law is contrary, and that default is in him; for he is bound to seek the feoffee if he be then in any other place within the realm of England.

- As if a man be bound in an obligation of twenty pounds upon condition endorsed upon the same obligation, that if he pay to him to whom the obligation is made at such a day ten pounds, then the obligation of twenty pounds shall lose his force, and be holden for nothing; in this case it behoveth him that made the obligation to seek him to whom the obligation is made if he be in England, and at the day set to tender unto him the said ten pounds, otherwise he shall forfeit the sum of twenty pounds comprised within the obligation [&c.]. And so it seemeth in the other case, &c. And albeit that some have said that the condition is depending upon the land, yet this proves not that the making of the condition to be performed, ought to be made upon the land, &c., no more than if the condition were that the feoffor at such a day shall do some special corporal service to the feoffee, not naming the place where such corporal service shall be done. In this case the feoffor ought to do such corporal service at the day limited to the feoffee, in what place soever of England that the feoffee be, if he will have advantage of the condition, &c. So it seemeth in the other case. And it seems to them that it shall be more properly said, that the estate of the land is depending upon the condition, than to say that the condition is depending upon the land, &c. *Sed quære, &c.*

§ 341. But if a feoffment in fee be made, reserving

to the feoffor a yearly rent, and for default of payment, a re-entry, &c., in this case the tenant needeth not to tender the rent, when it is behind, but upon the land; because this is a rent issuing out of the land, which is a rent seck. For if the feoffor be seised once of this rent, and after he cometh upon the land, &c., and the rent is denied him, he may have an assise of *novel disseisin*. For albeit he may enter by reason of the condition broken, &c., yet he may choose either to relinquish his entry, or to have an assise, &c. And so there is a diversity, as to the tender of a rent which is issuing out of the land, and of the tender of another sum in gross, which is not issuing out of any kind.

§ 342. And therefore it will be a good and sure thing for him that will make such feoffment in mortgage, to appoint an especial place where the money shall be paid, and the more special that it be put, the better it is for the feoffor. As if A. enfeoff B. to have to him and to his heirs, upon such condition, that if A. pay to B. on the feast of Saint Michael the archangel next coming, in the cathedral church of St. Paul's in London, within four hours next before the hour of noon of the same feast, at the rood loft [of the rood] of the north door within the same church, or at the tomb of Saint Erkenwald, or at the door of such a chapel, or at such a pillar, within the same church, that then it shall be lawful to the aforesaid A. and his heirs to enter, &c., in this case he needeth not to seek the feoffee in another place, nor to be in any other place, but in the place comprised in the indenture,

nor to be there longer than the time specified in the same indenture, to tender or pay the money to the feoffee, &c.

§ 343. Also, in such case, where the place [of payment] is limited, the feoffee is not bound to receive the payment in any other place but in the same place so limited. But yet if he do receive the payment in another place, this is good enough and as strong for the feoffor, as if the receipt had been in the same place so limited, &c.

§ 344. Also in the case of feoffment in mortgage, if the feoffor payeth to the feoffee a horse, or a cup of silver, or a ring of gold, or any such other thing in full satisfaction of the money, and the other receiveth it, this is good enough, and as strong as if he had received the sum of money, though the horse or the other thing were not of the twentieth part of the value of the sum of money, because that the other hath accepted it in full satisfaction.

§ 345. Also if a man enfeoff another¹ upon condition, that he and his heirs shall render to a stranger and to his heirs a yearly rent of twenty shillings, &c., and if he or his heirs fail of payment thereof, that then it shall be lawful to the feoffor and his heirs to enter, this is a good condition: and yet in this case, albeit such annual payment be called in the indenture a yearly rent, this is not properly a rent. For if it should be a rent, it must be rent service, rent charge, or a rent seck, and it is not any of these. For if the stranger were seised of this, and

¹ { in fee }

after it were denied him, he shall never have an assise of this, because that it is not issuing out of any tenements, and so the stranger hath not any remedy, if such yearly rent be behind in this case, but that the feoffor or his heirs may enter, &c. And yet if the feoffor or his heirs enter for default of payment, then such rent is taken away forever. And so such a rent is but as a pain set upon the tenant and his heirs, that if they will not pay this according to the form of the indenture, they shall lose their land by the entry of the feoffor or his heirs for default of payment. And in this case it seemeth that the feoffee and his heirs ought to seek the stranger and his heirs, if they be within England, [because there is no place limited where the payment shall be made, and] for that such rent is not issuing out of any land, &c.

§ 346. And here note two things: one is, that no rent (which is properly said a rent) may be reserved upon any feoffment, gift, or lease, but only to the feoffor, or to the donor, or to the lessor, or to their heirs, and in no¹ manner it may be reserved to any strange person. But if two joint-tenants make a lease by deed indented, reserving to one of them a certain yearly rent, this is good enough to him to whom the rent is reserved, for that he is privy to the lease, and not a stranger to the lease, &c.

§ 347. The second thing is, that no entry nor re-entry (which is all one) may be reserved or given to any person, but only to the feoffor, or to the donor, or to the

¹ { other }

lessor, or to their heirs: and such re-entry¹ cannot be given to any other person. For if a man letteth land to another for term of life by indenture, rendering to the lessor and to his heirs a certain rent, and for default of payment a re-entry, &c., if afterward the lessor by a deed granteth the reversion of the land to another in fee, and the tenant for term of life attorn, &c., if the rent be after behind, the grantee of the² reversion may distrain for the rent, because that the rent is incident to the reversion; but he may not enter into the land, and oust the tenant, as the lessor might have done, or his heirs, if the reversion had been continued in them, &c. And in this case the entry is taken away forever; for the grantee of the reversion cannot enter, *causâ quâ suprâ*. And the lessor nor his heirs cannot enter; for if the lessor might enter, then he ought to be in his former state, &c., and this may not be, because he hath aliened from him the reversion.

§ 348. Also if lord and tenant be, and the tenant make a lease for term of life, rendering to the lessor and his heirs such an annual rent, and for default of payment a re-entry, &c., if after the lessor dieth without heir during the life of the tenant for life, whereby the reversion cometh to the lord by way of escheat, and after

¹ Instead of "re-entry," the best French texts authorize "rent."

² Instead of "the," the translation in Co. Lit. has "a." Hargrave and Butler's notes say that "'a' seems to be here printed by mistake for 'the.'" The French texts, including the one printed in Co. Lit., authorize "the."

the rent of the tenant for life is behind, the lord may distrain the tenant for the rent behind; but he may not enter into the land by force of the condition, &c., because that he is not heir to the lessor,¹ &c.

§ 349. Also if land be granted to a man for term of two years, upon such condition, that if he shall pay to the grantor within the said two years forty marks, then he shall have the land to him and to his heirs, &c., in this case if the grantee enter by force of the grant, without any livery of seisin made unto him by the grantor, and after he payeth the grantor the forty marks within the two years, yet he hath nothing in the land but for term of two years, because no livery of seisin was made unto him at the beginning;—for if he should have a freehold and fee in this case, because he hath performed the condition, then he should have a freehold by force of the first grant, where no livery of seisin was made of this, which would be inconvenient,² &c. But if the grantor had made livery of seisin to the grantee by force of the grant, then should the grantee have the freehold and the fee upon the same condition.

§ 350. Also, if land be granted to a man for term of five years, upon condition that if he pay to the grantor within the two first years forty marks, that then he shall have fee, or otherwise but for term of the five years, and

¹ Instead of "lessor," the best French texts authorize "feoffor." In old black letter the two words are almost indistinguishable.

² Instead of "inconvenient," the best French texts authorize "against reason."

livery of seisin is made to him by force of the grant, now he hath a fee simple conditional, &c. And if in this case the grantee do not pay to the grantor the forty marks within the first two years, then immediately after the said two years past, the fee and the freehold is, and shall be adjudged, in the grantor; because that the grantor cannot after the said two years presently enter upon the grantee, for that the grantee hath yet title by three years to have and occupy the land by force of the same grant. And so because that the condition of the part of the grantee is broken, and the grantor cannot enter, the law will put the fee and the freehold in the grantor. For if the grantee in this case makes waste, then after the breach of the condition, &c., and after the two years, the grantor shall have his writ of waste. And this is a good proof then, that the reversion is in him, &c.

§ 351. But in such cases of feoffment upon condition, where the feoffor may lawfully enter for the condition broken, &c., there the feoffor hath not the freehold before his entry, &c.

§ 352. Also, if a feoffment be made upon such condition, that the feoffee shall give the land to the feoffor, and to the wife of the feoffor, to have and to hold to them and to the heirs of their two bodies engendered, and for default of such issue, the remainder to the right heirs of the feoffor. In this case, if the husband dieth, living the wife, before any estate in tail made unto them, &c., then ought the feoffee by the law to make an estate to the wife as near the condition, and also as near to the intent of

the condition, as he may make it: that is to say, to let the land to the wife for term of life without impeachment of waste, the remainder after her¹ decease to the heirs of the body of her husband on² her begotten, and for default of such issue, the remainder to the right heirs of the husband. And the cause why the lease shall be in this case to the wife alone without impeachment of waste is, for that the condition is, that the estate shall be made to the husband and to his wife in tail. And if such estate had been made in the life of the husband, then after the death of the husband she should have had an estate in tail, which estate is without impeachment of waste. And so it is reason, that as near as³ a man can make the estate to the intent of the condition, &c., that it should be made, &c., albeit she cannot have estate in tail, as she might have had if the gift in tail had been made to her husband and to her in the life of her husband, &c.

§ 353. Also, in this case, if the husband and wife have issue, and die before the gift in tail made to them, &c., then the feoffee ought to make an estate to the issue, and to the heirs of the body of his father and his mother begotten, and for default of such issue, &c., the remainder to the right heirs of the husband, &c. And the same law is in other like cases: and if such a feoffee will not

¹ Instead of "her," the translation in Co. Lit. has "his"; but Hargrave and Butler's notes say that "here the sense requires the word 'her' instead of 'his,' as it seems."

² Instead of "on," the best French texts authorize "and."

³ Instead of "as near as," the best French texts authorize "if afterwards."

make¹ such estate, &c., when he is reasonably required by them, which ought to have the estate by force of the condition, &c., then may the feoffor or his heirs enter.²

§ 354. Also, if a feoffment be made upon condition, that³ the feoffee shall re-enfeoff⁴ many men, to have and to hold to them and to their heirs for ever, and all they which ought to have estate die before any estate made to them, then ought the feoffee to make estate to the heir of him which survives of them, to have and to hold to him and to the heirs of him which surviveth.⁵

§ 355. Also, if a feoffment be made upon condition to enfeoff another, or to make a gift in tail to another, &c., if the feoffee before the performance of the condi-

¹ "Instead of 'make,' the translation in Co. Lit. has 'take.' Ritso's Science of the Law, 112, points out that 'we should read 'and if such feoffee will not make such estate,' &c., viz., to those who ought to have the estate by force of the condition.' Hargrave and Butler's notes, citing Ritso, say: 'This word 'take' is not agreeable to the sense of the passage; neither does it express the meaning of the French word *faire* used by Littleton, which signifies 'make' in English.'"

² { &c. }

³ Here the translation in Co. Lit. inserts "if." Ritso's Science of the Law, 112, says: "We should read 'upon condition that the feoffee shall re-enfeoff,' &c., and not 'upon condition that "if" the feoffee shall re-enfeoff,' which is unintelligible." Hargrave and Butler's notes, citing Ritso, say: "The sense as well as the original French seems to require that this passage should be read as if the word 'if' had been omitted." Tomlins says: "It should certainly be rejected, although it has the authority of the three oldest editions."

⁴ Instead of "re-enfeoff," almost all the French texts authorize "enfeoff."

⁵ { &c. }

tion, enfeoff a stranger, or make a lease for life, then may the feoffor and his heirs enter, &c., because he hath disabled himself to perform the condition, inasmuch as he hath made an estate to another, &c.

§ 356. In the same manner it is, if the feoffee, before the condition performed, letteth the same land to a stranger for term of years; in this case the feoffor and his heirs may enter, &c., because the feoffee hath disabled him to make an estate of the tenements according to that which was in the tenements, when the estate thereof was made unto him. For if he will make an estate of the tenements according to the condition, &c., then may the lessee for years enter and oust him to whom the estate is made, &c., and occupy this during his term.¹

§ 357. And many have said, that if such feoffment be made to a single man upon the same condition, and before he hath performed the same condition he taketh wife, then the feoffor and his heirs maintain may enter; because, if he hath made an estate according to the condition, and after dieth, then the wife shall be endowed, and may recover her dower by a writ of dower, &c.; and so, by the taking of a wife, the tenements be put in another plight than they were at the time of the feoffment upon condition, for that then no such wife was dowable, nor should be endowed by the law, &c.

§ 358. In the same manner it is, if the feoffee charge the land by his deed with a rent charge before the per-

¹ { &c. }

formance of the condition, or be bound in a statute staple, or statute merchant, in these cases the feoffor and his heirs may enter, &c., *causâ quâ suprâ*. For whosoever cometh to the lands by the feoffment of the feoffee, they¹ ought to be liable, and put in execution by force of the statute merchant, or of the statute staple. *Quære*.² But when the feoffor or his heirs, for the causes aforesaid, shall have entered, as it seems they ought, &c., then all such things, which before such entry might trouble or encumber the land so given upon condition, &c., as to the same land, are altogether defeated.

§ 359. Also, if a man make a deed of feoffment to another, and in the deed there is no livery of seisin unto him by force of the same condition, &c., and when the feoffor will make deed, he makes livery of seisin unto him upon certain condition;³ in this case nothing of the tenements passeth by the deed, for that the condition is not comprised within the deed, and the feoffment is in like force as if no such deed had been made.

§ 360. Also, if a feoffment be made upon this condition, that the feoffee shall not alien the land to any, this condition is void; because, when a man is enfeoffed of lands or tenements, he hath power to alien them to any person by the law. For if such a condition should be good, then the condition should oust him of all the power

¹ Instead of "they," the best French texts authorize "then the tenements."

² Instead of "*quære*," the best French texts have "&c."

³ { &c. }

which the law gives him, which should be against reason, and therefore such a condition is void.

§ 361. But if the condition be such, that the feoffee shall not alien to such a one, naming his name, or to any of his heirs, or of the issues of such a one, &c., or the like, which conditions do not take away all power of alienation from the feoffee, &c., then such condition is good.

§ 362. Also, if lands be given in tail upon condition, that the tenant in tail nor his heirs¹ shall not alien in fee, nor in tail, nor for term of another's life, but only for their own lives, &c., such condition is good. And the reason is, for that when he maketh such alienation and discontinuance of the entail, he doth contrary to the intent of the donor, for which the statute of Westminster II., cap. 1, was made, by which statute the estates in tail are ordained.

§ 363. For it is proved by the words comprised in the same statute,² that the will of the donor in such cases shall be observed, and when the tenant in tail maketh such discontinuance, he doth contrary to that, &c. And also, in estates in tail of any tenements, when the reversion of the fee simple, [or the remainder of the fee simple] is in other persons, when such discontinuance is made, then the fee simple³ in the remainder is discontinued. And because tenant in tail shall do no such

¹ { &c. }

² { that the intent of the making of the same statute was }

³ { in the reversion or the fee simple }

thing against the profits [of his issues] and good right, such condition is good, as is aforesaid, [&c.]

§ 364. Also, a man may give lands in tail upon such condition, that if the tenant in tail or his heirs alien in fee or in tail, or for term of another man's life, &c., and also that if all the issue coming of the tenant in tail be dead without issue, that then it shall be lawful for the donor and for his heirs to enter, &c. And by this way the right of the tail may be saved, after discontinuance, to the issue in tail, if there be any; so as by way of entry of the donor or of his heirs, the tail shall not be defeated by such condition: [*Quære hoc.*] And yet if the tenant in tail in this case, or his heirs make any discontinuance, he in the reversion, or his heirs, after that the tail is determined for default of issue, &c., may enter into the land by force of the same condition, and shall not be compelled to sue a writ of formedon in the reverter.

§ 365. Also, a man cannot plead in any action, that an estate was made in fee, or in fee tail, or for term of life, upon condition, if he doth not vouch a record of this, or show a writing under seal, proving the same condition. For it is a common learning, that a man by plea shall not defeat any estate of freehold by force of any such condition, unless he showeth the proof of the condition in writing &c., unless it be in some special cases, &c. But of chattels reals, as of a lease for years, or of grants of wards made by guardians in chivalry, and such like, &c., a man may plead that such leases or grants were

made upon condition, &c., without showing any writing of the condition. So in the same manner a man may do of gifts and grants of chattels personals and of contracts personals, &c.

§ 366. Also, albeit a man cannot in any action plead a condition which toucheth and concerns a freehold, without showing writing of this, as is aforesaid, yet a man may be aided upon such a condition by the verdict of twelve men taken at large in an assise of *novel disseisin*, or in any other action, where the justices will take the verdict of twelve jurors at large. As put the case, a man seised of certain land in fee letteth the same land to another for term of life without deed, upon condition to render to the lessor a certain rent, and for default of payment a re-entry, &c., by force whereof the lessee is seised as of freehold, and after, the rent is behind, by which the lessor entereth into the land, and after, the lessee arraign an assise of *novel disseisin* of the land against the lessor, who pleads that he did no wrong nor disseisin, and upon this the assise is taken; in this case the recognitors of the assise may say and render to the justices their verdict at large upon the whole matter, as to say, that the defendant was seised of the land in his demesne as of fee, and so seised, let the same land to the plaintiff for term of his life, rendering to the lessor such a yearly rent payable at such a feast, &c., upon such condition, that if the rent were behind at any such feast at which it ought to be paid, then it should be lawful for the lessor to enter, &c., by force of which lease the plaintiff was seised in his

demesne as of freehold, and that afterwards the rent was behind at such a feast,¹ &c., by which the lessor entered into the land upon the possession of the lessee, and prayed the discretion of the justices, if this be a disseisin done to the plaintiff or not;² then for that it appeareth to the justices, that this was no disseisin to the plaintiff, insomuch as the entry of the lessor was congeable on him, the justices ought to give judgment that the plaintiff shall not take anything by his writ of assise. And so in such case the lessor shall be aided, and yet no writing was ever made of the condition. For as well as the jurors may have conusance [of the lease, they also as well, may have conusance] of the condition which was declared and rehearsed upon the lease.

§ 367. In the same manner it is of a feoffment in fee, or a gift in tail, upon condition, although no writing were ever made of it.³ And as it is said of a verdict at large in an assise, &c., in the same manner it is of a writ of entry founded upon a disseisin; and in all other actions where the justices will take the verdict at large,⁴ there where such verdict at large is made, the manner of the whole entry is put in the issue, &c.

§ 368. Also, in such case where the inquest may give their verdict at large, if they will take upon them the

¹ { or year }

² { and }

³ { &c. }

⁴ According to the best French texts, the remainder of this section should read: "whereby such verdict at large maketh the nature of the matter put in the issue."

knowledge of the law upon the matter, they may give their verdict generally, as is put in their charge; as in the case aforesaid they may well say, that the lessor did not disseise the lessee, if they will, &c.

§ 369. Also, in the same case, if the case were such, that after that, that the lessor had entered for default of payment, &c., that the lessee had entered upon the lessor, and him disseised; in this case if the lessor arraign an assise against the lessee, the lessee may bar him of the assise; for he may plead against him in bar, how the lessor, who is plaintiff, made a lease to the defendant for term of his life, saving the reversion to the plaintiff, which is a good plea in bar, insomuch as he acknowledges the reversion to be to the plaintiff. In this case the plaintiff hath no matter to aid himself, but the condition, made upon the lease, and this he cannot plead, because he hath not any writing of this: and inasmuch as he cannot answer the bar, he shall be barred. And so in this case you may see that a man is disseised, and yet he shall not have assise. And yet if the lessee be plaintiff and the lessor defendant, he shall bar the lessee by verdict of the assise, &c. But in this case where the lessee is defendant, if he will not plead the said plea in bar, but plead *nul tort, nul diss*, then the lessor shall recover by assise, *causâ quâ suprâ*.

§ 370. And for that such conditions are most commonly put and specified in deeds indented, somewhat shall be here said to thee, my son, of an indenture, and

of a deed poll concerning¹ conditions. And it is to be understood, that if the indenture be bipartite, or tripartite, or quadripartite, all the parts of the indenture are but one deed in law, and every part of the indenture is of as great force and effect, as all the parts together be.

§ 371. And the making of an indenture is in two manners. One is to make them in the third person; another is to make them in the first person. The making in the third person is as in this form.

This indenture made between R. of P. of the one part, and V. of D. of the other part, witnesseth, that the said R. of P. hath granted, and by this present charter indented confirmed to the aforesaid V. of D. such land, &c. To have and to hold, [&c.,] upon condition, &c. In witness whereof the parties aforesaid [to these presents] interchangeably have put their seals. Or thus: in witness whereof to the one part of this indenture remaining with the said V. of D., the said R. of P. hath put his seal, and to the other part of the same indenture remaining with the said R. of P. the said V. of D. hath put his seal. Dated, &c.

Such an indenture is called an indenture made in the third person, because the verba, &c., are in the third person. And this form of indenture is the most sure making, because it is most commonly used, &c.

§ 372. The making of an indenture in the first person is as in this form. *To all Christian people to whom these*

¹Instead of "concerning," the best French texts authorize "containing."

presents indented shall come, A. of B. sends greeting in our Lord God everlasting. Know ye me to have given, granted, and by this my present deed indented confirmed to C. of D. such land, &c. Or thus: Know all men present and to come, that I, A. of B. have given, granted, and by this my present deed indented confirmed to C. of D. such land, &c. To have [and to hold,] &c., upon condition following, &c. In witness whereof, as well I the said A. of B. as the aforesaid C. of D. to these indentures have interchangeably put our seals. Or thus: In witness whereof I [the aforesaid A.] to the one part of this indenture have put my seal, and to the other part of the same indenture the said C. of D. hath put his seal, &c.

§ 373. And it seemeth that such indenture [which is] made in the first person is as good in law as the indenture made in the third person, when both parties have put to this their seals; for if in the indenture made in the third person, or in the first person, mention be made, that the grantor only hath put his seal, and not the grantee, then is the indenture only the deed of the grantor. But where mention is made, that the grantee hath put his seal to the indenture, &c., then is the indenture as well the deed of the grantee as the deed of the grantor. So is it the deed of them both, and also each part of the indenture is the deed of both parties in this case.

§ 374. Also, if an estate be made by indenture to one for term of his life, the remainder to another in fee upon a certain condition, &c., and if the tenant for life have put his seal to the part of the indenture, and after dieth,

and he in the remainder entereth into the land by force of his remainder, &c., in this case he is tied to perform all the conditions comprised in the indenture, as the tenant for life ought to have done in his lifetime, and yet he in the remainder never sealed any part of the indenture. But the cause is, for that in as much as he entered and agreed to have the lands by force of the indenture, he is bound to perform the conditions within the same indenture, if he will have the land, &c.

§ 375. Also if a feoffment be made by deed poll upon condition,¹ and for that the condition is not performed the feoffor, it hath been a question if the feoffor may poll, if the feoffee brings an action for this entry against the feoffor, it hath been a question if the feoffor may plead the condition by the said deed poll against the feoffee. And some have said he cannot, inasmuch as it seems unto them, that a deed poll, and the property of the same deed, belongeth to him to whom the deed is made, and not to him which maketh the deed. And in as much as such a deed doth not appertain to the feoffor, it seems unto them that he cannot plead it.² And others have said the contrary, and have showed divers reasons. One is, if the case were such, that in an action between them, if the feoffee plead the same deed, and show it to the court, in this case insomuch as the deed is in court, the feoffor may show to the court, how in the deed there are divers conditions to be performed [of the part of the feoffee,

¹ { &c. }

² { &c. }

&c., and because they were not performed] he entered, &c., and to this he shall be received. By the same reason when the feoffor hath the deed in hand, and show this to the court, he shall well be received to plead it, &c., and namely when the feoffor is privy to the *fait*, for he must be privy to the deed, when he makes the deed, &c.

§ 376. Also, if two men do a trespass to another, who releases to one of them by his deed all actions personals, and notwithstanding sueth an action of trespass against the other, the defendant may well show that the trespass was done by him and by another his fellow, and that the plaintiff by his deed (which he showeth forth,) released to his fellow all actions personals, and demand the judgment, &c., and yet such deed belongeth to his fellow, and not to him. But because he may have advantage by the deed, if he will show the deed to the court, he¹ may well plead this, &c. By the same reason [may the feoffor] in the other case, when he² ought to have advantage by the condition [comprised] within the deed poll.³

§ 377. Also, if the feoffee⁴ granteth the deed to the feoffor, such grant shall be good, and then the deed and the property thereof belongeth to the feoffor, &c. And when the feoffor hath the deed in hand, and is pleaded⁵ to the court, it shall be rather intended, that he cometh to

¹ { therefore }

² Instead of "he," the best French texts authorize "the feoffor."

³ { &c. }

⁴ { giveth or }

⁵ Instead of "is pleaded," the best French texts authorize "pleadeth it."

the deed by lawful means, than by a wrongful mean: and so it seemeth unto them, that the feoffor may well plead such deed poll, which compriseth the condition, &c., if he hath the same in hand.¹ *Ideo semper quære de dubiis, quia per rationes pervenitur ad legitimam rationem, &c.*

§ 378. Estates which men have upon condition in law, are such estates which have a condition by the law to them annexed, albeit that it be not specified in writing. As if a man grant by his deed to another the office of parkership of a park, to have and occupy the same office for term of his life, the estate which he hath in the office is upon condition in law, to wit, that the parker shall well and lawfully keep the park, and shall do that which to such office belongeth to do, or otherwise it shall be lawful to the grantor and his heirs to oust him, and to grant it to another, if he will, &c. And such condition as is intended by the law to be annexed to anything, is as strong as if the condition were² put in writing.

§ 379. In this manner it is of grants of the offices of steward, constable, beadlery, bailiwick, or other offices, &c. But if such office be granted to a man, to have and to occupy by himself or his deputy, then if the office be occupied by him or his deputy, as it ought by the law to be occupied, this sufficeth for him, or otherwise the grantor and his heirs may oust the grantee,³ as is aforesaid.

¹ { &c. }

² { set or }

³ Instead of the "grantee," the best French texts authorize "him."

§ 380. Also, estates of lands or tenements may be made upon condition in law, albeit upon the estate made there was not any mention or rehearsal made of this condition. As put the case, that a lease be made to the husband and wife, to have and to hold to them during the coverture between them; in this case they have an estate for term of their two lives upon condition in law, *scil.* if one of them die, or that there be a divorce between them, then it shall be lawful for the lessor and his heirs to enter, &c.

§ 381. And that they have an estate for term of their two lives is proved thus: every man that hath an estate of freehold in any lands or tenements, either he hath an estate in fee, or in fee tail, or for term of his own life, or for term of another man's life; and by such a lease they have a freehold, but they have not by this grant fee, nor fee tail, nor for term of another's life, *ergo*, they have an estate for term of their own lives, but this is upon condition in law, in form aforesaid: and in this case if they shall do waste, the feoffor shall have a writ of waste against them, supposing by his writ, *quòd tenet ad terminum vitæ, &c.*, but in his count he shall declare how and in what manner the lease was made.

§ 382. In the same manner it is, if an abbot make a lease to a man,¹ to have and to hold to him during the time that the lessor is abbot; in this case the lessee hath

¹ Here the translation in Co. Lit. inserts "for years." Ritao's Science of the Law, 112, says: "The words 'for years' are an interpolation, and involve a contradiction in terms." Hargrave

an estate for term of his own life: but this is upon condition in law, *scil.* that if the abbot resign, or be deposed, that then it shall be lawful for his successor to enter, &c.

§ 383. Also, a man may see in the Book of Assises, an. 38 E. III., [pl. 3,] a plea of assise in this form following, *scil.* An assise of *novel disseisin* was sometime brought against A., who pleaded to the assise, and it was found by verdict, that the ancestor of the plaintiff devised his lands to be sold by the defendant, who was his executor, and to make distribution of the money for his soul; and it was found, that presently after the death of the testator, one tendered to him a certain sum of money for the lands, but not to the value; and that the executor afterwards held the lands in his own hands two years, to the intent to sell the same dearer to some other; and it was found, that he had all the time taken the profits of the lands to his own use, without doing anything for the soul of the deceased, &c. *Mowbray*, [Justice, said,] the executor in this case is bound by the law to make the sale as soon as he may after the death of his testator, and it is found that he refused to make sale, and so there was a default in him; and so by force of the devise he was bound to put all the profits coming of the lands to the use of the dead, and it is found that he took them to his own use, and so another default in him. Wherefore it was

and Butler's notes, citing Ritso, say: "It seems that the text should be read as if the words 'for years' had been omitted. . . It is observable that the original French does not warrant the insertion."

adjudged, that the plaintiff should recover.¹ And so it appeareth by the said judgment, that by force of the said devise, the executor had no estate nor power in the lands, but upon condition in law.

§ 384. [And many other things there are of estates upon condition in law,] and in such cases he needed not to have showed any deed rehearsing the condition, for that the law itself purporteth the condition, &c.

Ex paucis dictis intendere plurima possis.

More shall be said of conditions in the next chapter,² in the chapter of Releases, and in the chapter of Discontinuance.

¹ [&c.]

² Instead of "the next chapter," the best French texts authorize "the chapter of Descents which toll Entries."

CHAPTER VI.

DESCENTS WHICH TOLL ENTRIES.

§ 385. Descents which toll entries are in two manners, to wit, where the descent is in fee, or in fee tail. Descents in fee which toll entries are, as if a man seised of certain lands or tenements is by another disseised, and the disseisor hath issue, and dieth of such estate seised, now the lands descend to the issue of the disseisor by course of law, as heir unto him. And because the law cast the lands or tenements upon the issue by force of the descent, so as the issue cometh to the lands by course of law, and not by his own act, the entry of the disseisee is taken away, and he is put to sue a writ of *entrie sur disseisin* against the heir of the disseisor, to recover the land.¹

§ 386. Descents in tail which take away entries are, as if a man be disseised, and the disseisor giveth the same land to another in tail, and the tenant in tail hath issue and dieth of such estate seised, and the issue enter; in this case the entry of the disseisee is taken away, and he is put to sue against the issue of the tenant in tail a writ of *entrie sur disseisin*.

§ 387. And note, that in such descents which take

¹ [&c.]

away entries, it behoveth that a man die seised in his demesne as of fee, or in his demesne as of fee tail. For a dying seised for term of life, or for term of another man's life, doth never take away an entry.¹

§ 388. Also, a descent of a reversion, or of a remainder, doth not take away an entry.² So as in those cases which take away entries by force of descents, it behoveth that he dieth seised of fee and freehold at the time of his decease, [or of fee tail and freehold at the time of his death,] or otherwise such descent doth not take away an entry.

§ 389. Also, as it is said of descents which descend to the issue of them which die seised, &c., the same law is where they have no issue, but the lands descend to the brother, sister, uncle, or other cousin of him which dieth seised.³

§ 390. Also, if there be lord and tenant, and the tenant be disseised, and the disseisor alien to another in fee, and the alienee die without issue, and the lord enter as in his escheat; in this case the disseisee may enter upon the lord, because the lord cometh not to the land by descent, but by way of escheat.

§ 391. Also, if a man be seised of certain land in fee, or in fee tail, upon condition to render certain rent, or upon other condition; albeit such tenant seised in fee, or in fee tail, dieth seised, yet if the condition be broken in

¹ { &c. }

² { &c. }

³ { &c. }

their lives, or after their decease, this shall not take away the entry of the feoffor or donor, or of their heirs, for that the tenancy is charged with the condition, and the state of the tenant is conditional, in whose hands soever that the tenancy cometh, &c.

§ 392. Also, if such tenant upon condition be disseised, and the disseisor die thereof seised, and the land descend to the heir of the disseisor, now the entry of the tenant upon condition, who was disseised, is taken away. Yet if the condition be broken, the feoffor or the donor which made the estate upon condition, or their heirs, may enter, *causâ quâ supra*.

§ 393. Also, if a disseisor die seised, &c., and his heir enter, &c., who endoweth the wife of the disseisor of the third part of the land, &c., in this case as to this part which is assigned to the wife in dower, presently after the wife entereth, and hath the possession of the same third part, the disseisee may lawfully enter upon the possession of the wife into the same third part. And the reason is, for that when the wife hath her dower, she shall be adjudged in immediately by her husband, and not by the heir; and so, as to the freehold of the same third part, the descent is defeated.¹ And so you may see, that before the endowment the disseisee could not enter into any part, &c., and after the endowment he may enter [upon the wife,] &c., but yet he cannot enter upon the other two parts, which the heir of the disseisor hath by the descent.²

¹ { &c. }

² { &c. }

§ 394. Also, if a woman be seised of land in fee, whereof I have right and title to enter, if the woman take husband, and have issue between them, and after the wife die seised, and after the husband die, and the issue enter, &c., in this case I may enter upon the possession of the issue, for that the issue comes not to the lands immediately by descent after the death of the mother, &c., [but by the death of the father.]

[*Contrarium tenetur P. 9 H. VII., per tout le court, and M. 37 H. VI.*]¹

§ 395. Also, if a disseisor enfeoff his father in fee, and the father die seised of such estate, by which the land descend to the disseisor, as son and heir, &c., in this case the disseisee may well enter upon the disseisor, notwithstanding the descent; for that as to the disseisin, the disseisor shall be adjudged in but as a disseisor, notwithstanding the descent,² [*quia particeps criminis.*]

§ 396. Also, if a man seised of certain land in fee have issue two sons, and die seised, and the younger son enter by abatement into the land, and hath issue, and die seised thereof, and the land descend to his issue, and the issue enters into the land: in this case the eldest son, or his heir, may enter by the law upon the issue of the younger son, notwithstanding the descent, because that when the younger son abated into the land after the

¹ Coke says: "This is an addition and therefore to be passed over."

² { &c. }

death of his father, before any entry [made] by the eldest son, the law intends that he entered claiming as heir to his father. And for that the eldest son claims by the same title, that is to say, as heir to his father, he and his heirs may enter upon the issue of the younger son, notwithstanding the descent, &c., because they claim by the same title. And in the same manner it shall be, if there were more descents from one issue to another issue of the younger son.

§ 397. But in this case, if the father were seised of certain lands in fee, and hath issue two sons, and die, and the eldest son¹ enter, and is seised, &c., and after² the younger brother disseiseth him, by which disseisin he is seised in fee, and hath issue, and of this estate dieth seised, then the elder brother cannot enter, but is put to his writ of *entrie sur disseisin*, [*&c.*,] to recover the land. And the cause is, for that the youngest brother cometh to the lands by wrongful disseisin done to his elder brother; and for this wrong the law cannot intend that he claimeth as heir to his father, no more than if a stranger had disseised the elder brother which had no title, &c. And so you may see the diversity, where the younger brother entereth after the death of the father before any entry made by the elder brother in this case,³ and where the elder brother enters after the death of his

¹ Instead of "son," some French texts authorize "brother."

² I.e. afterwards.

³ { &c. }

father, and after is disseised by the younger brother, where the younger after dieth seised.¹

§ 398. In the same manner it is, if a man seised of certain land in fee, hath issue two daughters, and dieth, the eldest daughter entereth into the land claiming all to her, and thereof only taketh the profits, and hath issue and dieth seised, by which her issue enter, which issue hath issue and dieth seised, and the second issue enter,² *et sic ultra*, yet the younger daughter, or her issue as to the moiety, may enter upon any issue whatsoever of the elder daughter, notwithstanding such descent, for that they claim by one same title, &c. But in such case where both sisters have entered after the death of their father, and were thereof seised, and after the eldest sister had disseised the younger of her part, and was thereof seised in fee, and hath issue, and of such estate dieth seised, whereby the lands descend to the issue of the elder sister, then the younger sister nor her heirs cannot enter, &c. *causâ quâ supra*, &c.

§ 399. Also, if a man be seised of certain lands in fee, and hath issue two sons, and the elder is a bastard and the younger *mulier*, and the father die, and the bastard entereth claiming as heir to his father, and occupieth the land all his life, without any entry made upon him by the *mulier*, and the bastard hath issue, and dieth seised of such estate in fee, and the land descend to his issue, and his issue entereth, &c., in this case the *mulier* is without remedy, for he may not enter, nor have any

¹ { &c. } ² { &c. }

action to recover the land, because there is an ancient law in this case, [&c.].

§ 400. But it hath been the opinion of some, that this shall be intended where the father hath a son bastard by a woman, and after marrieth the same woman, and after the espousals he hath issue by the same woman a son or a daughter, and after the father dieth, &c., if such bastard entereth, &c., and hath issue and die seised, &c., then shall the issue of such bastard have the land clearly to him, as it is said before, &c., and not any other bastard of the mother which was never married to his father; and this seemeth to be a good and reasonable opinion: for such a bastard born before marriage celebrated between his father and his mother, by the law of holy church is *mulier*, albeit by the law of the land he is a bastard, and so he hath a colour to enter as heir to his father, for that he is by one law *mulier*, *scil.* by law of holy church. But otherwise it is of a bastard, which hath no [manner of] colour to enter as heir, in so much as he can by no law be said to be *mulier*, for such a bastard is said in the law to be *quasi nullius filius*, &c.

§ 401. But in the case aforesaid, where the bastard enter after the death of the father, and the mulier oust him, and after the bastard disseise the mulier, and hath issue and dieth seised, and the issue enter, then the mulier may have a writ of *entrie sur disseisin* against the issue of the bastard, and shall recover the land, &c. And so you may see a diversity where such bastard continues the possession all his life without interruption, and

where the mulier entereth and interrupts the possession of such bastard, &c.

§ 402. Also, if an infant within age hath such cause to enter into any lands or tenements upon another, which is seised in fee, or in fee tail of the same lands or tenements, if such man who is so seised, dieth of such estate seised, and the lands descend to his issue during the time that an infant is within age, such descent shall not take away the entry of the infant, but that he may enter upon the issue which is in by descent, for that no laches shall be adjudged in an infant within age in such a case.

§ 403. Also, if husband and wife, as in right of the wife, have title and right to enter into lands which another hath in fee, or in fee tail, and such tenant dieth seised, &c., in such case the entry of the husband is taken away upon the heir which is in by descent. But if the husband die, then the wife may well enter upon the issue which is in by descent, for that no laches of the husband shall turn the wife or her heirs to any prejudice nor loss in such case, but that the wife and her heirs may well enter, where such descent is eschewed¹ during the coverture.

§ 404. [But the court holdeth, where such title is given to a feme sole, who after taketh husband which doth not enter, but suffer a descent, &c., there otherwise it is, for it shall be said the folly of the wife to take such a husband, which entered not in time, &c.]²

¹ *I.e.* fallen.

² Coke says: "This is added."

§ 405. Also, if a man which is of non sane memory, that is to say, in Latin, *qui non est compos mentis*, hath cause to enter into any such tenements, if such descent, *ut suprà*, be had in his life during the time that he was not of sound memory, and after dieth, his heir may well enter upon him which is in by descent. And in this case you may see a case, where the heir may enter, and yet his ancestor which had the same title could not enter. For he which was out of his memory at the time of such descent, if he will enter after such a descent, if an action upon this be sued against him, he hath nothing to plead for himself, or to help him, but to say, that he was not of sane memory at the time of such descent, &c. And he shall not be received to say this, for that no man of full age shall be received in any plea by the law to¹ disable his own person, but the heir may well disable the person of his ancestor for his own advantage in such case, for that no laches may be adjudged by the law in him which hath no discretion in such case.

§ 406. And if such a man of non sane memory make a feoffment, &c., he [himself] cannot enter, nor have a writ called *Dum non fuit compos mentis, &c., causâ quâ suprà*; but after his death his heir may well enter, or have the said writ of *Dum non fuit compos mentis* at his choice.² [The same law is where an infant within age maketh a feoffment, and dieth, his heir may enter, or have a writ of *Dum fuit infra ætatem, &c.*]

¹ { stultify and }.

² { &c. }.

§ 407. Also, if I be disseised by an infant within age, who alieneth to another in fee, and the alienee dieth seised, and the lands descend to his heir, the infant being¹ within age, my entry is taken away, [&c.].

§ 408. But if the infant within age enter upon the heir which is in by descent, as he well may, for that the same descent was during his nonage, then I may well enter upon the disseisor, because by his entry he hath defeated and taken away the descent.

§ 409. In the same manner it is, where I am disseised, and the disseisor make a feoffment in fee upon condition, and the feoffee die of such estate seised,² I may not enter upon the heir of the feoffee: but if the condition be broken, so as for this cause the feoffor enter upon the heir, now I may well enter, for that when the feoffor or his heirs enter for the condition broken, the descent is utterly defeated, [&c.]

§ 410. Also, if I be disseised, and the disseisor hath issue and entereth into religion, by force whereof the lands descend to his issue, in this case I may well enter upon the issue, and yet there was a descent. But for that such descent cometh to the issue by the act of the father,

¹ Instead of "the infant being," the translation in Co. Lit. has "being an infant." Ritso's Science of the Law, 110, points out that the proper translation is "the infant being." Hargrave and Butler's notes say: "It is apprehended that, on comparing the text with the version, it will be found that Lord Coke has given a wrong translation of Littleton. . . . The words, *estant l'enfant deins age*, should therefore be translated 'the infant being under age' "

² { &c. }

scil. for that he entered into religion, &c., and the descent came not unto him by the act of God, *scil.* by death, &c., my entry is congeable.¹ For if I arraign an assise of *novel disseisin* against my disseisor, albeit he after enter into religion, this shall not abate my writ, but my writ, notwithstanding this, shall stand in his force, and [my recovery] against him shall be good. And by the same reason the descent which cometh to his issue by his own act, shall not take from me my entry, &c.

§ 411. Also, if I let unto a man certain lands for the term of twenty years, and another disseiseth me, and oust the termor, and die seised, and the lands descend to his heir, I may not enter; and yet the lessee for years may well enter, because that by his entry he doth not oust the heir who is in by descent of the freehold which is descended unto him, but only [claimeth] to have the lands for term of years, which is no expulsion from the freehold of the heir who is in by descent. But otherwise it is, where my tenant for term of life is disseised, *causa patet*, [&c.]

§ 412. Also, it is said, that if a man be seised of lands in fee by occupation in time of war, and thereof dieth seised in the time of war, and the tenements descend to his heirs, such descent shall not oust any man of his entry; and of this a man may see in a plea upon a writ of *aiel*, 7 E. II.

§ 413. Also, that no dying seised, where the tenements come to another by succession, shall take away the

¹ *I.e.* legal.

entry of any person, &c. As of¹ prelates, abbots, priors, deans, or of the parson of a church, [or of other bodies politic,] &c., albeit there were twenty dyings seised, and twenty successors, this shall not put any man from his entry.²

More shall be said of descents in the next chapter.³

¹ Instead of "As of," the best French texts authorize "For as to."

² { &c. }

³ Instead of "next chapter," the best French texts authorize "chapter of Continual Claim."

CHAPTER VII.

CONTINUAL CLAIM.

§ 414. Continual claim is where a man hath right and title to enter into any lands or tenements, whereof another is seised in fee, or in fee tail, if he which hath title to enter makes continual claim to the lands or tenements before the dying seised of him which holdeth the tenements, then albeit that such tenant dieth thereof seised, and the lands or tenements descend to his heir, yet may he who hath made such continual claim, or his heir, enter into the lands or tenements so descended, by reason of the continual claim made, notwithstanding the descent. As in case that a man be disseised, and the disseisee makes continual claim to the tenements in the life of the disseisor, although that the disseisor dieth seised in fee, and the land descend to his heir, yet may the disseisee enter upon the possession of the heir, notwithstanding the descent.¹

§ 415. In the same manner it is, if tenant for life alien in fee, he in the reversion or he in the remainder may enter upon the alienee. And if such alienee dieth seised of such estate without continual claim made to the

¹ { &c. }

tenements, before the dying seised of the alienee, and the lands by reason of the dying seised of the alienee descend to his heir, then cannot he in the reversion nor he in the remainder enter. But if he in the reversion or in the remainder, who hath cause to enter upon the alienee, make continual claim to the land before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his lifetime.¹

§ 416. Also, if land be let to a man for term of his life, the remainder to another for term of life, the remainder to the third in fee, if tenant for life alien to another in fee, and he in the remainder for life maketh continual claim to the land before the dying seised of the alienee, and after² the alienee dieth seised,³ and after⁴ he in the remainder for life die before any entry made by him, in this case he in the remainder in fee may enter⁵ upon the heir of the alienee, by reason of the continual claim made by him which had the remainder for life; because that such right as he had of entry, shall go and remain to him in the remainder after him, insomuch as he in the remainder in fee could not enter upon the alienee in fee during the life of him in the remainder for life, and for that he could not then make continual claim. ([For none can make continual claim,] but when he hath title to enter, &c.)

¹ { &c. }

² *I.e.* afterwards.

³ { &c. }

⁴ *I.e.* afterwards.

⁵ { &c. }

§ 417. But it is to be seen of thee, my son, how and in what manner such continual claim shall be made; and to learn this well, three things are to be understood. The first thing is, if a man hath cause to enter into any lands or tenements in divers towns in one same county, if he enter into one parcel of the lands or tenements which are in one town, in the name of all the lands or tenements, into the which he hath right to enter within all the towns of the same county; by such entry he shall have as good a possession and seisin of all the lands and tenements whereof he hath title of entry, as if he had entered in deed into every parcel; and this seemeth great reason.

§ 418. For if a man will enfeof another without deed of certain lands or tenements, which he hath in many towns in one county, and he will deliver seisin to the feoffee of parcel of the tenements within one town in the name of all the lands or tenements which he hath in the same town, and in other towns, &c., all the said tenements, &c., pass by force of the said livery of seisin to him to whom such feoffment in such manner is made, and yet he to whom such livery of seisin was made, hath no right in all the lands or tenements in all the towns, but by reason of the livery of seisin made of parcel of the lands or tenements in one town; *à multo fortiori*, it seemeth good reason that when a man hath title to enter into the lands or tenements in divers towns in one same county, before entry by him made, that by the entry made by him into parcel of the lands in one town, in the name of all the lands and tenements to which he hath

title to enter within the same county, this shall vest¹ a seisin of all in him, and by such entry he hath possession and seisin in deed, as if he had entered into every parcel.

§ 419. The second thing to be understood is, that if a man hath title to enter into any lands or tenements, if he dares not enter into the same lands or tenements, nor into any parcel thereof, for doubt of beating, or for doubt of maiming, or for doubt of death, if he goeth and approach as near to the tenements as he dare for such doubt, and by word claim the lands to be his, presently by such claim he hath a possession and seisin in the lands, as well as if he had entered in deed, although he never had possession or seisin of the same [lands or] tenements before the said claim.

§ 420. And that the law is so, it is well proved by a plea of an assise in the book of assises, an. 38 E. III., [pl. 32,] the tenor whereof followeth in this manner. In the county of Dorset, before the justices, it was found by verdict of assise, that the plaintiff which had right by descent of inheritance to have the tenements put in plaint, at the decease of his ancestor was abiding in the town where the tenements were, and by parol claimed the tenements amongst his neighbours, but for fear of death he durst not approach the tenements, but bringeth his assise, and upon this matter found, it was awarded that he should recover, &c.

§ 421. The third thing is to know within what time [and by what time] the claim which is said continual

¹ Instead of "shall vest," the best French texts authorize "is."

claim shall serve and aid him that maketh the claim, and his heirs. And as to this it is to be understood, that he which hath title to enter, when he will make his claim, if he dare approach the land, then he ought to go to the land, or to parcel of it, and make his claim; and if he dare not approach the land for doubt or fear of beating, or maiming, or death, then ought he to go and approach as near as he dare towards the land, or parcel of it, to¹ make his claim.

§ 422. And if his adversary who occupieth the land, dieth seised in fee, or in fee tail, within the year and a day after such claim, whereby the lands descend to his son, as heir to him, yet may he which made the claim enter upon the possession of the heir, [&c.]

§ 423. But in this case after the year and the day that such claim was made,² if the father then died seised the morrow next after the year and the day, or any other day after, &c., then cannot he which made the claim enter; and therefore if he which made the claim will be sure at all times that his entry shall not be taken away by such descent, &c., it behoveth him that within the year and the day after the first claim [made,] to make another claim in form aforesaid, and within the year and the day after the second claim [made,] to make the third claim in the same manner, and within the year and the day after the third claim to make another claim, and so over, that is to say, to make a claim within every year

¹ Instead of "to," the best French texts authorize "and."

² { if no other claim was made, }

and day next after every claim made during the life of his adversary, and then at what time soever his adversary dieth seised, his entry shall not be taken away by any descent. And such claim in such manner¹ made, is most commonly taken and named continual claim of him which maketh the claim, &c.

§ 424. But yet in the case aforesaid, where his adversary dieth within the year and the day next after the claim, this is in law a continual claim, insomuch as his adversary within the year and the day next after the same claim dieth. For he which made his claim needeth not to make any other claim, but at what time he will within the same year and day, &c.

§ 425. Also, if the adversary be disseised within the year and the day after such claim, and the disseisor thereof dieth seised within the year and the day, &c., such dying seised shall not grieve him which made the claim, but that he may enter, &c. For whosoever he be that dieth seised within the year and the day after such claim made, this shall not hurt him that made the claim, but that he may enter, &c., albeit there were many dyings seised, and many descents within the same year and day, &c.

§ 426. Also, if a man be disseised, and the disseisor dieth seised within the year and day next after the disseisin made, whereby the tenements descend to his heir, in this case the entry of the disseisee is taken away, for the year and day which should aid the disseisee in such

¹ { to be }

case,¹ shall not be taken from the time of title of entry accrued unto him, but only from the time of the claim made by him in manner aforesaid. And for this cause it shall be good for such disseisee to make his claim² in as short time as he can after the disseisin, &c.

§ 427. Also, if such disseisor occupieth the lands forty years or³ more years, without any claim made by the disseisee, &c., and the disseisee a little before the death of the disseisor makes a claim in the form aforesaid, if so it fortuneth that within the year and the day after such claim the disseisor die, &c., the entry of the disseisee is congeable, &c. And therefore it shall be good for such a man which hath not made claim, and which hath good title of entry,⁴ when he heareth that his adversary lieth languishing, to make his claim, &c.

§ 428. Also, as it is said in the cases put, where a man hath title of entry by cause of a disseisin, &c., the same law is where a man hath right to enter by cause of another title, &c.

§ 429. Also, of the said foresayings thou mayst know (my son) two things. One is, where a man hath title to enter upon a tenant in tail, if he maketh such a claim to the land, then is the estate tail defeated, or this claim is as an entry made by him, and is of the same effect in law as if he had been upon the same tenements, and had entered into the same, as before is said. [And] then

¹ { &c. }

² { &c. }

³ { many }

⁴ { &c. }

when the tenant in tail immediately after such claim continue his occupation in the lands, this is a disseisin made of the same tenements to him which made such claim, and so by consequent, the tenant then hath a fee simple.

§ 430. The second thing is, that as often as he which hath right of entry maketh such claim,¹ [and this] notwithstanding his adversary continue his occupation,² so often the adversary doth wrong and disseisin to him which made the claim. And for this cause so often may he which makes the same claim for every such wrong and disseisin done unto him, have a writ of trespass, [*Quare clausum fregit, &c.*, and recover his damages, &c.]

§ 431. [Or he may have a writ]³ upon the statute of R. II., made in the fifth year of his reign, supposing by his writ that his adversary had entered into the lands or tenements of him that made the claim, where his entry was not given by the law, &c., and by this action he shall recover his damages, &c. And if the case were such, that the adversary occupied the tenements with force and arms, or with a multitude of people at the time of such claim, &c., [immediately after the same claim]⁴ may he which made the claim for every such act have a writ of forcible entry, and shall recover his treble damages, &c.

§ 432. Also,⁵ it is to be seen, if the servant of a man

¹ { &c. } { ² &c. }

³ The earliest texts treat this section and the preceding as an unbroken discussion.

The division into sections, made by West in 1581, occasionally is unfortunate.

⁴ { then } ⁵ { here }

who hath title to enter, may by the commandment of his master make continual claim for his master or not.

§ 433. And it seemeth that in some cases he may do this; for if he by his commandment cometh to any parcel of the land, and there maketh claim, &c., in the name of his master, this claim is good enough for his master, for that he doth all that which his master [should or] ought to do in such case, &c. [Also] if the master saith to his servant, that he dares not come to the land, nor to any parcel of it, to make his claim, &c., and that he dare approach no nearer to the land than to such a place called Dale, and command his servant to go to the same place of Dale, and there make a claim for him, &c., if the servant doth this, &c., this also seemeth a good claim for his master, as if his master were there in his proper person, for that the servant did all that which his master durst and ought to do by the law in such a case, &c.

§ 434. Also, if a man be so languishing, or so decrepid, that he cannot by any means come to the land, nor to any parcel of it, or if there be a recluse, which may not by reason of his order go out of his house, if such manner of person command his servant to go and make claim for him, and such servant dare not go to the land, nor to any parcel of it, for doubt of beating, mayhem, or death, [&c.,] and for this cause the servant cometh as near to the land as he dareth for such doubt,¹ and maketh the claim, &c., for his master, it seemeth that such claim for his master is strong enough, and good in

¹ Instead of "doubt," the best French texts authorize "dread."

law. For otherwise his master should be in a very great mischief; for it may well be that such person which is sick, decrepid, or recluse, cannot find any servant which dare go to the land, or to any parcel of it, to make the claim for him, &c.

§ 435. But if the master of such servant be in good health, and can and dare well go to the lands, or to parcel of it, to make his claim, &c., if such master command his servant to go to any parcel of the land to make claim for him, and when the servant is in going to do the commandment of his master, he heareth by the way such things as he dare not come to any parcel of the land to make the claim for his master, and therefore he cometh as near to the land as he dare for doubt of death, and there maketh claim for his master, and in then ame of his master, &c., it seemeth that the doubt in law in such case shall be whether such claim shall avail his master or not, for that the servant did not all that which his master at the time of his commandment durst have done, &c. *Quære.*

§ 436. Also, some have said, that where a man is in prison and is disseised, and the disseisor dieth seised during the time that the disseisee is in prison, whereby the tenements descend to the heir of the disseisor, they have said, that this shall not hurt the disseisee which is in prison, but that he well may enter, notwithstanding such a descent, because he could not make continual claim when he was in prison.

§ 437. [But the opinion of all the justices, P. 11

H. VII., was that if the disseisin be before the imprisonment, although the dying seised be he being in the prison, his entry is taken away.]¹

And also, if he which is in prison be outlawed in an action of debt or trespass, or in an appeal of robbery, &c., he shall reverse this outlawry² pronounced against him, &c.

§ 438. Also, if a recovery be by default against such a one as is in prison, he shall avoid the judgment by a writ of error, because he was in prison at the time of the default made, &c. And for that such matters of record shall not hurt him which is in prison, but that they shall be reversed, &c., *à multo fortiori*, it seemeth that a matter in fact, *scil.* such descent had, when he was in prison, shall not hurt him, &c., especially seeing he could not go out of prison to make continual claim, &c.

§ 439. In the same manner it seemeth, where a man is out of the realm in the king's service, for the business of the realm, if such a one be disseised when he is in service of the king, [and the disseisor dieth seised, the disseisee being in the king's service,] that such descent shall not hurt the disseisee; but for that he could not make continual claim,³ it seems to them that when he cometh⁴ into England, he may enter upon the heir of the

¹ Coke says " This is of a new addition, and mistaken, for there is no such opinion, P. 11 H. VII., but it is 9 H. VII. fo. 24, b."

² { by writ of error, &c., because he was in prison at the time of the outlawry. }

³ { &c. }

⁴ { again }

disseisor, &c. For such a man shall reverse an outlawry¹ pronounced against him during the time that he was in the king's service, &c., therefore, *à multo fortiori*, he shall have aid and indemnity by the law in the other case, &c.

§ 440. Also, others have said, that if a man be out of the realm, though he be not in the king's service, if such a man being out of the realm be disseised of lands or tenements within the realm, and the disseisor die seised, &c., the disseisee being out of the realm, it seemeth unto them, that when the disseisee cometh into the realm, that he may well enter upon the heir of the disseisor, &c., and this seemeth unto them for two causes: One is, that he that is out of the realm cannot have knowledge of the disseisin made unto him by understanding of the law, no more than that a thing done out of the realm may be tried within this realm by the oath of twelve men;² and to compel such a man to make continual claim, which by the understanding of the law can have no knowledge or cognizance of such disseisin made or done, this shall be inconvenient, namely, when such a disseisin is done unto him when he was out of the realm, and also the dying seised was done when he was out of the realm; for in such case he may not by possibility after the common presumption make continual claim; but otherwise it should be if the disseisee were within the realm at the time of the disseisin, or at the time of the dying seised of the disseisor.

¹ { which is } ² { &c. }

§ 441. Another matter they allege for a proof that before the statute of King Edward the Third, made the thirty-fourth year of his reign, by which statute non-claim is ousted, &c., the law was such, that if a fine were levied of certain lands or tenements, if any that was a stranger to the fine had right to have and to recover the same lands or tenements, if he came not and made his claim thereof within a year and a day next after the fine levied, he shall be barred for ever, *quia dicebatur quòd finis finem litibus imponebat*. And that law was such, it is proved by the statute of Westminster II.,¹ *De donis conditionalibus*, where it is spoken if the fine be levied of tenements given in the tail, &c., *quòd finis ipso jure sit nullus, nec habeant heredes, aut illi ad quos spectat reversio (licet plenæ ætatis fuerint in Angliâ, et extra*

¹ Ritso's Science of the Law, 108-109, says that this section is "contradictory and unintelligible, according to the present reading," and suggests that "to restore this section, as we may presume it to have been originally written by Littleton," the reading up to this point, should be: "Another matter they allege for proof, (of the allegation contained in the sect. 440, that a disseisin and descent shall not bind the disseisee, who is out of the realm at the time, &c.) viz. that before the statute of King Edward III. made the thirty-fourth year of his reign, (by which statute non-claim is ousted, &c.) the law was such, that if a fine was levied of certain lands or tenements, if any that was a stranger to the fine, had right to have and recover the same lands and tenements, if he came not and made his claim thereof within a year and a day next after the fine levied, he was forever barred, *quia dicebatur quod finis finem litibus imponebat*. But if he were out of the realm at the time of the fine levied, &c., or in prison, or not of full age, he was not barred, although he made not his claim, &c. And that the law was such, is proved by the statute of Westminster II."

prisonam.) *necessitat apponere clameum suum*. So it is proved that if a stranger that hath right unto the tenements, if he were out of the realm at the time of the fine levied, &c., shall have no damage, though that he made not his claim, &c., though that such fine was matter of record: by greater reason it seemeth unto them, that a disseisin and descent that is matter in deed, shall not so grieve him that was disseised when he was out of the realm at the time of that disseisin, and also at the time that the disseisor died seised, &c., but that he may well enter, notwithstanding such descent.¹

§ 442. Also, inquire if a man be disseised, and he arraign an assise against the disseisor, and the recognitors of the assise chant² for the plaintiff, and the justices of assise will be advised of their judgments until the next assise, &c., and in the mean season the disseisor dieth seised, &c., yet the said suit of the assise shall be taken in law for the disseisee a continual claim, inso-much that no default was in him, &c.

§ 443. Also, inquire if an abbot of a monastery die, and during the time of vacation a man wrongfully entereth in certain parcels of land of the monastery, claiming the land unto him and his heirs, and of that estate dieth seised, and the land descendeth unto his heirs, and after that an abbot is chosen, and made abbot of the monastery, a question is, if the abbot may enter upon the heir or not. And it seemeth to some, that the abbot may

¹ { &c. }

² *I.e.* find.

well enter in this case, for this, that the convent in time of vacation was no person able to make continual claim; for no more than they be personable to sue an action, no more be they able to make continual claim, for the convent is but a dead body without head; for in time of vacation a grant made unto them is void; and in this case an abbot may not have a writ of entry upon disseisin against the heir, for this, that he was never disseised. And if the abbot may not enter in this case, then he shall be put unto his writ of right, [&c.,] which shall be hard for the house; by which it seemeth to them, that the abbot may well enter, &c.

Quæras de dubiis, legem bene discere si vis:

Quærere dat sapere, quæ sunt legitima verè.

CHAPTER VIII.

RELEASES.

§ 444. Releases are in divers manners, viz. releases of all the right which a man hath in lands or tenements,¹ and releases of actions personals and reals, and other things. Releases of all the right which men have in lands and tenements, &c., are commonly made in this form, or of this effect:

§ 445. *Know all men by these presents, that I A. of B. have remised, released, and altogether from me and my heirs quit-claimed: or thus, for me and my heirs quit-claimed to C. of D. all the right, title, and claim which I have, or by any means may have, of and in one messuage with the appurtenances in F., &c. And it is to be understood, that these words, remisisee, et quietum clamâsse, are of the same effect as these words, relaxâsse.*

§ 446. Also, these words, which are commonly put in such releases,² [*scil.*] (*quæ quovismodo in futurum habere potero*) are as void in law; for no right passeth by a release, but the right which the releasor hath at the time of the release made. For if there be father and son,

¹ { &c. }

² { &c. }

and the father be disseised, and the son (living his father) releaseth by his deed to the disseisor all the right which he hath or may have in the same tenements without clause of warranty, &c., and after the father dieth, &c., the son may lawfully enter upon the possession of the disseisor, for that he had no right in the land¹ in his father's life, but the right descended to him after the release made by the death of his father, &c.

§ 447. Also, in releases of all the right which a man hath in certain lands, &c., it behoveth him to whom the release is made in any² case, that he hath the freehold in the lands³ in deed, or in law, at the time of the release made, [&c.] For in every case where he to whom the release is made hath the freehold in deed, or in law, at the time of the release, &c., there the release is good.

§ 448. Freehold in law is, as if a man disseiseth another and dieth seised, whereby the tenements descend to his son, albeit that his son doth not enter into the tenements, yet he hath a freehold in law, which by force of the descent is cast upon him, and therefore a release made to him so being seised of a freehold in law, is good enough; and if he taketh wife being so seised in law, although he never enter in deed, and dieth, his wife shall be endowed.⁴

§ 449. Also, in some cases of releases of all the right, albeit that he to whom the release is made hath nothing

¹ { when he released }

² Instead of "any," the best French texts authorize "such."

³ { &c. } ⁴ { &c. }

in the freehold in deed nor in law, yet the release is good enough. As if the disseisor letteth the land which he hath by disseisin to another for term of his life, saving the reversion to him, if the disseisee or his heir release to the disseisor all the right, &c., this release is good, because he to whom the release is made, had in law a reversion at the time of the release made.

§ 450. In the same manner it is, where a lease is made to a man for term of life, the remainder to another for term of [another man's] life, the remainder to the third in tail, the remainder to the fourth in fee, if a stranger which hath right to the land releaseth all his right to any of them in the remainder, such release is good, because every of them hath a remainder in deed vested in him.

§ 451. But if the tenant for term of life be disseised, and afterwards he that hath right (the possession being in the disseisor) releaseth to one of them to whom the remainder was made all his right, this release is void, because he had not¹ a remainder in deed at the time of the release made, but only a right of a remainder.

§ 452. And note, that every release made to him which hath a reversion or a remainder in deed, shall serve and aid him who hath the freehold, as well as him to whom the release was made, if the tenant hath the release in his hand [to plead.]

¹ [in him]

§ 453. In the same manner [it is, where] a release [is] made to the tenant for life, or to the tenant in tail, [this] shall enure to them in the reversion, or to them in the remainder, as well as to the tenant of the freehold, and they shall have as great advantage of this, if they can shew it.¹

§ 454. Also, if there be lord and tenant, and the tenant be disseised, and the lord releaseth to the disseisee all the right which he hath in the seigniory or in the land, this release is good, and the seigniory is extinct: and this is by reason of the privity which is between the lord and the disseisee. For if the beasts of the disseisee be taken, and of them the disseisee sueth a replevin against the lord, he shall compel the lord to avow upon him; for if he avow upon the disseisor, then upon the matter shewn the avowry shall abate, for the disseisee is tenant to him in right and in law.

§ 455. Also, if land be given to a man in tail, reserving to the donor and to his heirs a certain rent, if the donee be disseised, and after the donor release to the donee and his heirs all the right which he hath in the land, and after the donee enter into the land upon the disseisor; in this case the rent is gone, for that the disseisee, at the time of the release made, was tenant in right and in law to the donor, and the avowry of fine force ought to be made upon him by the donor for the rent behind, &c. But yet nothing of the right of the

¹ { &c. }

lands, *scil.* of the reversion, shall¹ pass by such release, for that the donee to whom the release is made, then had nothing in the land but only a right, and so the right of the land could not [then] pass to the donee by such release.

§ 456. In the same manner it is, if a lease be made to one for term of life, reserving to the lessor and to his heirs a certain rent, if the lessee be disseised, and after the lessor release to the lessee and to his heirs all the right which he hath in the land, and after the lessee entereth, albeit in this case the rent is extinct, yet nothing of the right of the reversion shall pass, *causâ quâ supra*.

§ 457. But if there be very lord and very tenant, and the tenant maketh a feoffment in fee, the which feoffee doth never become tenant to the lord,² if the lord release to the feoffor all his right, &c., this release is altogether void, because the feoffor hath no right in the land, and he is not tenant in right to the lord, but only tenant as to make the avowry, and he shall never compel the lord to avow upon him, for the lord shall avow upon the feoffee if he will.

§ 458. Otherwise it is, where the very tenant is disseised, as in the case aforesaid; for if the very tenant who is disseised, hold of the lord by knight's service and dieth, (his heir being within age) the lord shall have and seize the wardship of the heir, and so shall he not

¹ { then }

² { &c. }

have the ward of the feoffor that made the feoffment in fee, &c., so there is a great diversity between these two cases.

§ 459. Also, if a man letteth to another his land for term of years, if the lessor release to the lessee all his right, &c., before that the lessee had entered into the same land by force of the same lease, such release is void, for that the lessee had not possession in the land at the time of the release made, but only a right to have the same land by force of the lease. But if the lessee enter into the land, and hath possession of it by force of the said lease, then such release made to him by the feoffor, or by his heir, is sufficient to him by reason of the privity which by force of the lease is between them, &c.

§ 460. In the same manner it is, as it seemeth, where a lease is made to a man to hold of the lessor at his will, by force of which lease the lessee hath possession: if the lessor in this case make a release to the lessee of all his right, &c., this release is good enough for the privity which is between them; for it shall be in vain to make an estate by a livery of seisin to another, where he hath possession of the same land by the lease of the same man before, &c.

[But the contrary is holden, Pasch. 2 E. IV., by all the justices.]¹

§ 461. But where a man of his own head occupieth

¹Coke says: "This is of a new addition, and the book here cited ill understood, for it is to be understood of a tenant at sufferance."

lands or tenements at the will of him which hath the freehold, and such occupier claimeth nothing but at will, &c., if he which hath the freehold will release all his right to the occupier, &c., this release is void, because there is no privity between them by the lease made to the occupier, nor by other manner, &c.

§ 462. Also, if a man enfeoff other men of his land upon confidence and to the intent to perform his last will, and the feoffor occupieth the same land at the will of his feoffees, and after the feoffees release by their deed to their feoffor all their right, &c., this hath been a question, if such release be good or no. And some have said, that such release is void, because there was no privity between the feoffees and their feoffor, insomuch as no lease was made after such feoffment by the feoffees to the feoffor, to hold at their will: and some have said the contrary, and that for two causes.

§ 463. One is, that when such feoffment is made upon confidence to perform the will of the feoffor, it shall be intended by the law, that the feoffor ought presently to occupy the land at the will of his feoffees; and so there is the like kind of privity between them, as if a man make a feoffment to others, and they immediately upon the feoffment will and grant, that their feoffor shall occupy the land at their will, &c.

§ 464. Another cause they allege, that if such land be worth forty shillings a year, &c., then such feoffor shall be sworn in assise and other inquests in pleas reals, and also in pleas personals, of what great sum

soever the plaintiff will declare, [&c.] And this is by the common law of the land: *Ergo*, this is for a great cause, and the cause is, for that the law will that such feoffors and their heirs ought to occupy, &c., and take and enjoy all manner of profits, issues, and revenues, &c., as if the lands were their own, without interruption of the feoffees, notwithstanding such feoffment. *Ergo*, the same law giveth a privity between such feoffors and the feoffees upon confidence, &c., for which causes they have said, that such releases made by such feoffees upon confidence to their feoffor or to his heirs, &c., so occupying the lands,¹ shall be good enough: and this is the better opinion, as it seemeth.

[*Quære*, for this seemeth no law at this day.]²

§ 463. Also, releases according to the matter in fact, sometimes have their effect by force to enlarge the estate of him to whom the release is made. As if I let certain land to one for term of years, by force whereof he is in possession, and after I release to him all the right which I have in the land without putting more words in the deed, and deliver to him the deed, then hath he an estate but for term of his life. And the reason is, for that when the reversion or remainder is in a man who will by his release enlarge the estate of the tenant, &c., he shall have no greater estate, but in such manner and form as if such lessor were seised in

¹ { &c. }

² Coke says: "The *quære* here made . . . is not in the original, but added by some other, and therefore to be rejected."

fee, and by his deed will make an estate to one in a certain form, and deliver to him seisin by force of the same deed: if in such deed of feoffment there be not any word of inheritance,¹ then he hath but an estate for life; and so it is in such releases made by those in the reversion or in the remainder. For if I let land to a man for term of his life, and after² I release to him all my right without more saying in the release, his estate is not enlarged. But if I release to him and to his heirs, then he hath a fee simple; and if I release to him and to his heirs of his body begotten, then he hath a fee tail, &c. And so it behoveth to specify in the deed what estate he to whom the release is made shall have.

§ 466. Also, sometimes releases shall enure *de mitter*, and vest the right of him which makes the release to him to whom the release is made. As if a man be disseised, and he releaseth to his disseisor all his right, in this case the disseisor hath his right, so as where before his estate was wrongful, now by this release it is made lawful and right.

§ 467. But here note, that when a man is seised in fee simple of any lands or tenements, and another will release to him all the right which he hath in the same tenements, he needeth not to speak of the heirs of him to whom the release is made, for that he hath a fee simple at the time of the release made. For if the release was made to him³ for a day, or an hour, this shall be as

¹ { &c. } ² *I.e.* afterwards.

³ { and his heirs }

strong to him in law, as if he had released to him and his heirs. For when his right was once gone from him by his release without any condition, &c., to him that hath the fee simple, it is gone for ever.

§ 468. But where a man hath a reversion in fee simple, or a remainder in fee simple, at the time of the release made, there if he will release to the tenant for years, or for life, or to the tenant in tail, he ought to determine the estate which he to whom the release is made shall have by force of the same release, for that such release shall enure to enlarge the estate of him to whom the release is made.¹

§ 469. But otherwise it is, where a man hath but a right to the land, and hath nothing in the reversion nor in the remainder in deed. For if such a man release all his right to one which is tenant in the freehold, all his right is gone, albeit no mention be made of the heirs of him to whom the release is made. For if I let lands² to one for term of his life, if I after release to him to enlarge his estate, it behoveth that I release to him and to his heirs of his body engendered, or to him and his heirs, or by these words. To have and to hold to him and to his heirs³ of his body engendered, [or to the heirs males of his body engendered] or such like estates, or otherwise he hath no greater estate than he had before.

§ 470. But if my tenant for life letteth the same

¹ { &c. } ² { or tenements }

³ { males }

land over to another for term of the life of his lessee, the remainder to another in fee, now if I release to him to whom my tenant made a lease for term of life, I shall be barred for ever, albeit that no mention be made of his heirs, for that at the time of the release made I had no reversion, but only a right to have the reversion. For by such a release, and the remainder over, which my tenant made in this case, my reversion was discontinued,¹ [&c.], and this release shall enure to him in the remainder, to have advantage of it, as well as to the tenant for term of life.

§ 471. For to this intent the tenant for term of life and he in the remainder are as one tenant in law, and are as if one tenant were sole seised in his demesne as of fee at the time of such release made unto him, &c.

§ 472. Also, if a man be disseised by two, if he release to one of them, he shall hold his companion out of the land, and by such release he shall have the sole possession and esate in the land. But if a disseisor enfeoff two in fee, and the disseisee release to one of the feoffees, this shall enure to both the feoffees, and the cause of the diversity between these two cases is pregnant enough. [For that they come in by feoffment, and the others by wrong, &c.]²

§ 473. Also, if I be disseised, and my disseisor is disseised, if I release to the disseisor of my disseisor, I

¹ I.e. divested.

² Coke says: "This is of a new addition, and not in the original."

shall not have an assise nor enter upon the disseisor, because his disseisor hath my right by my release, &c. [And] so it seemeth in this case, if there be twenty disseised one after another, and I release to the last disseisor, this disseisor shall bar all the others of their actions and their titles. And the cause is [as it seemeth,] for that in many cases, when a man hath lawful title of entry, although he doth not enter, he shall defeat all mean titles by his release, &c. But this holds not in every case, as shall be said hereafter.

§ 474. Also, if my disseisor letteth the tenements whereof he disseised me to another for term of life, and after¹ the tenant for term of life alieneth in fee, and I release to the alienee, &c., then my disseisor cannot enter, *causâ quâ suprâ*, albeit that at one time the alienation was to his disinheritance, &c.

§ 475. Also, if a man be disseised, who hath a son within age and dieth, and the son being within age the disseisor dieth seised, and the land descend to his heir, and a stranger abate, and after² the son of the disseisee, when he cometh to his full age, releaseth all his right to the abator; in this case the heir of the disseisor shall not have an assise of *mort d'ancestor* against the abator; but shall be barred,³ because the abator hath the right of the son of the disseisee by his release, and the entry of the son was congeable,⁴ for that he was within age at the time of the descent, &c.

¹ *I.e.* afterwards. ² *I.e.* afterwards.

³ { of the assise } ⁴ { &c. }

§ 476. But if a man be disseised, and the disseisor maketh a feoffment upon condition, viz. to render to him a certain rent, and for default of payment a re-entry, &c., if the disseisee release to the feoffee upon condition, yet this shall not amend¹ the estate of the feoffee upon condition; for notwithstanding such release, yet his estate is upon condition, as it was before.

[And with this agreeth the opinion of all the justices, Pasch. 9 H. VII.]

§ 477. In the same manner it is, where a man is disseised of certain lands, and the disseisor grant a rent-charge out of the same land, &c., albeit the disseisee doth afterwards release to the disseisor, &c., yet the rent-charge remains in force. And the reason in these two cases is this, that a man shall not have advantage by such release which shall be against his proper acceptance, and against his own grant. And albeit some have said, that where the entry of a man is congeable upon a tenant, if he releases to the same tenant, that this shall avail the tenant, as if he had entered upon the tenant, and after enfeoffed him, &c., this is not true in every case. For in the first case of these two cases aforesaid, if the disseisee had entered upon the feoffee upon condition, and after enfeoffed him, then is the condition wholly defeated and avoided. And so in the second case, if the disseisee entereth and enfeoffeth him who granted the rent-charge, then is the rent-charge

¹ Instead of "amend," the best French texts authorize "abate."

taken away and avoided, but it is not void by any such release without entry made, &c.

§ 478. Also, if a man be disseised by an infant who alien in fee, and the alienee dieth seised, and his heir entereth, the disseisor¹ being within age, now is it in the election of the disseisor to have a writ of *dum fuit infra ætatem*, or a writ of right against the heir of the alienee, and which writ of them he shall choose, he ought to recover by the law, [&c.]. And also he may enter into the land without any recovery, and in this case the entry of the disseisee is taken away. But in this case if the disseisee release his right to the heir of the alienee, and after the disseisor bringeth a writ of right against the heir of the alienee, and he join the mise upon the mere right, &c., the great assise ought to find by the law, that the tenant hath more mere right² than the disseisor, &c., for that the tenant hath the right of the disseisee by his release, the which is the most ancient and most mere right: for by such release all the right of the disseisee passeth to the tenant, and is in the tenant. And to this some have said, that in this case where a man which hath right to lands or tenements (but his entry is not congeable) if he release to the tenant³ all his right, &c., that such release shall enure by way of extinguishment. As to this it may be said,

¹ Instead of "disseisor," the earliest French texts authorize "alienor."

² { &c. }

³ { &c. }

that this is true as to him which releaseth; for by his release he hath dismissed himself quite of his right as to his person, but yet the right which he hath may well pass to the tenant by his release. For it should be inconvenient that such an ancient right should be extinct altogether, &c., for it is commonly said, that a right cannot die.

§ 479. But releases which enure by way of extinguishment against all persons, are where he to whom the release is made, cannot have that which to him is released. As if there be lord and tenant, and the lord release to the tenant all the right which he hath in the seigniory, or all the right which he hath in the land, &c., this release goeth by way of extinguishment against all persons, because that the tenant cannot have service to receive¹ of himself.

§ 480. In the same manner is it of a release made to the tenant of the land of a rent charge or common of pasture, &c., because the tenant cannot have that which to him is released, &c., so such releases shall enure by way of extinguishment in all ways.²

§ 481. Also, to prove that the grand assise ought to pass for the demandant,³ in the case aforesaid, I have often heard the reading of the statute of Westminster

¹ Instead of "service to receive," the best French texts authorize "this."

² Instead of "in all ways," the best French texts authorize "against all persons."

³ Tomlins points out that "demandant" is a misprint for "tenant."

II., which begun thus: *In casu quo vir amiserit per defallam tenementum quod fuit jus uxoris suæ, &c.*, that at the common law before the said statute, if a lease were made to a man for term of life, the remainder over in fee, and a stranger by feigned action recovered against the tenant for life by default, and after the tenant dieth, he in the remainder had no remedy before the statute, because he had not any possession of the land.

§ 482. But if he in the remainder had entered upon the tenant for life, and disseised him, and after the tenant enter upon him, and after the tenant for life by such recovery lose by default and die, now he in the remainder may well have a writ of right against him which recovers, because the mise shall be joined only upon the mere right, &c. Yet in this case the seisin of him in the remainder was defeated by the entry of the tenant for life. But peradventure some will argue and say, that he shall not have a writ of right in this case, for that when the mise is joined, it is joined in this manner, (*scilicet*) if¹ the tenant hath more mere right in the land in the manner as he holdeth, than the demandant hath in the manner as he demandeth, and for that the seisin of the demandant was defeated by the entry of the tenant for term of life, &c., then he hath no right in the manner as he demandeth.

§ 483. To this it may be said, that these words (*modo et formâ prout, &c.*, in many cases are words of

¹ *I.e.* whether.

form of pleading, and not words of substance. For if a man bring a writ of entry *in casu proviso*, of the alienation made by the tenant in dower to his disinherittance, and counteth of the alienation made in fee, and the tenant saith, that he did not alien in manner as the demandant hath declared, and upon this they are at issue, and it is found by verdict that the tenant aliened in tail, or for term of another man's life, the demandant shall recover: yet the alienation was not in manner as the demandant hath declared, &c.

§ 484. Also, if there be lord and tenant, and the tenant hold of the lord by fealty only, and the lord distrain the tenant for rent, and the tenant bringeth a writ of trespass against his lord for his cattle so taken, and the lord plead that the tenant holds of him by fealty and certain rent, and for the rent behind he came to distrain, &c., and demand judgment of the writ brought against him, *quare vi et armis*, &c., and the other saith that he doth not hold of him in the manner as he suppose, and upon this they are at issue, and it is found by verdict that he holdeth of him by fealty only; in this case the writ shall abate, and yet he doth not hold of him in the manner as the lord hath said. For the matter of the issue is, whether the tenant holdeth of him or no; for if he holdeth of him, although that the lord distrain the tenant for other services which he ought not to have, yet such writ of trespass *quare vi et armis*, &c., doth not lie against the lord, but shall abate.

§ 485. Also, in a writ of trespass for battery, or for

goods carried away, if the defendant plead not guilty, in manner as the plaintiff suppose, and it is found that the defendant is guilty in another town, or at another day than the plaintiff suppose, yet he shall recover. And [so] in many other cases these words, *scil.*, in manner as the demandant or the plaintiff hath supposed, do not make any matter of substance of the issue: for in a writ of right, where the mise is joined upon the mere right, that is as much as to say, and to such effect, *viz.* whether the tenant or demandant hath more mere right to the thing in demand.

§ 486. Also, if a man be disseised, and the disseisor dieth seised, &c., and his son and heir is in by descent, and the disseisee enter upon the heir of the disseisor, which entry is a disseisin, &c., if the heir bring an assise, or a writ [of entry in nature of an assise, he shall recover.]

§ 487. [But if the heir bring a writ]¹ of right against the disseisee, he shall be barred, for that when the grand assise is sworn, their oath is upon the mere right, and not upon the possession. For if the heir of the disseisor sue an assise of *novel disseisin*, or a writ of *entry* in nature of an assise, and recovers against the disseisee, and sueth execution, yet may the disseisee have a writ of *entry* in the *per* against him, for the disseisin made to him by his father, or he may have against the heir a writ of right.

¹ According to the earliest printed texts, this section and the preceding must be read as a continuous passage.

§ 488. But if the heir ought to recover against the disseisee in the case aforesaid by a writ of right, then all his right should be clearly taken away, for that judgment final shall be given against him, which should be against reason where the disseisee hath the more mere right.

§ 489. And know (my son) that in a writ of right, after the four knights have chosen the grand assise, then he hath no greater delay than in a writ of *formedon*, after the parties be at issue, &c. And if the mise be joined upon battle, then he hath lesser delay.

§ 490. Also, a release of all the right, &c., in some case is good, made to him which is supposed tenant in law, albeit he hath nothing in the tenements. As in a *præcipe quòd reddat*, if the tenant alien the land hanging the writ, and after the demandant releaseth to him all his right, &c., this release is good, for that he is supposed to be tenant by the suit of the demandant, and yet he hath nothing in the land at the time of the release made.

§ 491. In the same manner it is in a *præcipe quòd reddat* the tenant vouch, and the vouchee enters into warranty, if afterward the demandant release to the vouchee all his right,¹ this is good enough, for that the vouchee, after that he hath entered into warranty, is tenant in law to the demandant, &c.

§ 492. Also, as to releases of actions reals and personals, it is thus: Some actions are mixt in the realty

¹ { &c. }

and in the personalty: as an action of waste sued against tenant for life; this action is in the realty, because the place wasted shall be recovered; and also in the personalty, because treble damages shall be recovered for the wrongful waste¹ done by the tenant; and therefore in this action a release of actions reals is a good plea in bar, and so is a release of actions personals.

§ 493. [And in a *quare impedit* a release of actions personals is a good plea, and so is a release of actions reals, *per Martin, quod fuit concessum*. Hil. 9 H. VI. fo 57.]²

§ 494. In the same manner it is in an assise of *novel disseisin*, for that it is mixt in the realty and in the personalty. But if such an issue be arraigned against the disseisor and the tenant, the disseisor may well plead a release of actions personals to bar the assise, but not a release of actions reals, for none shall plead a release of actions reals in an assise but the tenant.

§ 495. Also, in such actions reals which ought to be sued against the tenant of the freehold, if the tenant hath a release of actions reals from the demandant made unto him before the writ purchased, and he plead this, it is a good plea for the demandant to say, that he which pleads the plea had nothing in the freehold at the time of the release made, for then he had no cause to have an action real against him.

¹Instead of "wrongful waste," the best French texts authorize "wrong and waste."

²Coke says: "This is an addition to Littleton."

§ 496. Also, in such case where a man may enter into lands or tenements, and also may have an action real for this, which is given by the law against the tenant;¹ if in this case the demandant releaseth to the tenant all manner of actions reals, yet this shall not take the demandant from his entry, but the demandant may well enter notwithstanding such release, for that nothing is released but the action, &c.

§ 497. In the same manner is it of things personal: as if a man by wrong take away my goods, if I release to him all actions personals, yet I may by the law take my goods out of his possession.

§ 498. Also, if I have [any] cause to have a writ of detinue of my goods against another, albeit that I release to him all actions personals, yet I may [by the law] take my goods out of his possession, because no right of the goods is released to him, but only the action, &c.

§ 499. Also, if a man be disseised, and the disseisor maketh a feoffment to divers persons to his use,² and the disseisor continually taketh the profits, &c., and the disseisee release to him all actions reals, and after he sueth against him a writ of entry in nature of an assise by reason of the statute, because he taketh the profits, &c. *Quære*, how the disseisor shall be aided by the said release; for if he will plead the release generally, then the demandant may say, that he had nothing in the free-

¹ { &c. }

² { &c. }

hold at the time of the release made; and if he plead the release specially, then he must acknowledge a disseisin, and then may the demandant enter into the land, &c., by his acknowledgment of the disseisin, &c., but peradventure by special pleading he may bar him of the action [which he sueth,] &c., though the demandant may enter.

§ 500. Also, if a man sue an appeal of felony of the death of his ancestor against another, though the appellant release to the defendant all manner of actions real and personal, this shall not aid the defendant, for that this appeal is not an action real, inasmuch as the appellant shall not recover any realty in such appeal: neither is such appeal an action personal, inasmuch as the wrong was done to his ancestor, and not to him. But if he release to the defendant all manner of actions, then it shall be a good bar in an appeal. And so a man may see, that a release of all manner of actions is better than a release of actions reals and personals, &c.

§ 501. Also, in an appeal of robbery, if the defendant will plead a release of the appellant of all actions personals, this seemeth no plea; for an action of appeal, where the appellee shall have judgment of death, &c., is higher than an action personal is, and is not properly called an action personal: and there if the defendant will plead a release of the appellant to bar him of the appeal, in this case he must have a release of all manner of appeals, or all manner of actions, as it seemeth, &c.

§ 502. But in appeal of mayhem, a release of all manner of actions personals is a good plea in bar, for that in such an action he shall recover nothing but damages.

§ 503. Also, if a man be outlawed in an action personal by process upon the original, and bringeth a writ of error, if he at whose suit he was outlawed will plead against him a release of all manner of actions personals, this seemeth no plea; for by the said action he shall recover nothing in the personalty, but only to reverse the outlawry; but a release of the writ of error is a good plea.

§ 504. Also, if a man recover debt or damages, and he releaseth to the defendant all manner of actions, yet he may lawfully sue execution by *capias ad satisfaciendum*, or by *elegit*, or *fieri facias*: for execution upon such a writ cannot be said an action.

§ 505. But if after the year and day the plaintiff will sue a *scire facias*, to know if the defendant can say any thing why the plaintiff should not have¹ execution, then it seemeth that such release of all actions shall be a good plea in bar. But to some seems the contrary, in as much as the writ of *scire facias* is a writ of execution, and is to have execution, &c. But yet in as much as upon the same writ the defendant may plead divers matters after judgment given to oust him of execution,

¹ Instead of "to know if the defendant can say anything why the plaintiff should not have," the best French texts simply authorize "to have."

as outlawry, [&c.] and divers other matters,¹ this may be well said an action, &c.

§ 506. And I take it, that in a *scire facias* upon a fine, a release of all manner of actions is a good plea in bar.

§ 507. But where a man recovereth debt or damages, and it is agreed between them that the plaintiff shall not sue execution,² then it behoveth that the plaintiff make a release to him of all manner of executions.³

§ 508. Also, if a man release to another all manner of demands, this is the best release to him to whom the release is made, that he can have, and shall enure most to his advantage. For by such release of all manner of demands, all manner of actions reals, personals, and actions of appeal, are taken away and extinct, and all manner of executions are taken away and extinct.

§ 509. And if a man hath title of entry into any lands or tenements, by such a release his title is taken away.

[*Sed quære de hoc*, for Fitz-James, Chief Justice of England, holdeth the contrary, because an entry cannot be properly said a demand.]⁴

§ 510. And if a man hath a rent service or rent charge, or common of pasture, &c., by such a release of

¹ { therefore }

² Instead of "shall not sue execution," the best French texts authorize "shall be ousted of action."

³ { &c. }

⁴ Coke says: "This is an addition, and no part of Littleton, and the opinion here cited clearly against law."

all manner of demands made to the tenants of the land out of which the service or the rent is issuing, or in which the common is, the service, the rent, and the common, is taken away and extinct, &c.

§ 511. Also, if a man releaseth to another all manner of quarrels, or all controversies or debates between them, &c., *quære*, to what matter and to what effect such words shall extend themselves, &c.

§ 512. Also, if a man by his deed be bound to another in a certain sum of money, to pay at the feast of St. Michael next ensuing,¹ if the obligee before the said feast release to the obligor all actions, he shall be barred of the duty for ever, and yet he could not have an action at the time of the release made.

§ 513. But if a man letteth land to another for a year, to yield to him at the feast of St. Michael next ensuing forty shillings and afterwards, before the same feast, he releaseth to the lessee all actions, yet after the same feast he shall have an action of debt for the non-payment of the forty shillings, notwithstanding the said release. *Stude causam diversitatis* between these two cases.

§ 514. Also, where a man will sue a writ of right, it behoveth that he counteth of the seisin of himself, or of his ancestors, and also that the seisin was in the same king's time, as he pleadeth in his plea. For this is an ancient law used, as appeareth by the report of a plea

¹ { &c. }

the eyre of Nottingham,¹ [tit. Droit in Fitzherbert, cap. 26,] in this form following. John Barre brought his writ of right against Reynold of Assington, and demanded certain lands, &c., [where] the mise is joined in bank, and the original and the process were sent before the justices errants, where the parties came, and the [twelve] knights were sworn without challenge of the parties, to be allowed, because that choice was made by assent of the parties, with the four knights, and the oath was this: That I shall say the truth, &c., whether R. of A. hath more mere right to hold the tenements which John Barre demandeth against him by his writ of right, or John to have them, as he demandeth, and for nothing to let to say the truth, so help me God, &c., without saying to their knowledge. And the like oath shall be made in an attain, and in battle, (and in wager of law, for these do bring every thing to an end. But John Barre counted of the seisin of one Ralfe his ancestor in the time of King Henry, and Reynold upon the mise² joined tendered half a mark for the time, &c. And hereupon Herle, Justice, said to the grand assise after that they were charged upon the mere right, You good men, Reynold gave half a mark to the king for the time, to the intent that if you find that the ancestor of John was not seised in the time that the demandant hath pleaded, you shall inquire no further upon the right;

¹ Coke says: "This should be Northampton, according to the original."

² *I.e.* issue.

and for this, you shall tell us, whether the ancestor of John (Ralfe by name) was seised in King Henry's time, as he hath pleaded, or not. And if you find that he was not seised in this time, you shall inquire no more; and if you find that he was seised, then you shall inquire further of the writ.¹ And after² the grand assise came in with their verdict, and said, that Ralfe was not seised in the time of King Henry, whereby it was awarded that Reynold should hold the tenements demanded against him, to him and his heirs quit of John Barre, and his heirs to the remnant. And John in mercy, &c. And the reason why I have shewed to thee, my son, this plea, is to prove the matter precedent which is said in a writ of right; for it seemeth by this plea, that if Reynold had not tendered the half mark to inquire of the time, &c., then the grand assise ought to be charged only to inquire of the mere right, and not of the possession, &c. [And] so always in a writ of right, if the possession whereof the demandant counteth be in the king's time, as he hath pleaded, then the charge of the grand assise shall be only upon the mere right, although that the possession were against the law, as it is said before in this chapter, &c.

¹ Instead of "writ," the earliest French texts authorize "right."

² *I.e.* afterwards.

CHAPTER IX.

CONFIRMATION.

§ 515. A deed of confirmation is commonly in this form, or to this effect: *Know all men, &c., that I A. of B. have ratified, approved, and confirmed to C. of D. the estate and possession which I have,¹ of and in one messuage, &c., with the appurtenances in F., &c.*

§ 516. And in some case a deed of confirmation is good and available, where in the same case a deed of release is not good nor available. As if I let land to a man for term of his life, who letteth the same to another for term of forty years, by force of which he is in possession; if I by my deed confirm the estate of the tenant for years, and after the tenant for life dieth during the term of ² years, I cannot enter into the land during the said term.

§ 517. Yet if I by my deed of release had released to the tenant for years in the life-time of the tenant for

¹ Ritso's Science of the Law, 112, says: "We should read... 'he hath,'...and not... 'I have.'" Hargrave and Butler's notes, citing Ritso, say: "It seems that the text should be read as if Littleton had in this place used the words 'he hath,' instead of 'I have.'" Yet "I have" is authorized by the best texts.

² { forty. }

life, this release shall be void, for that then there was not any privity between me and the tenant for years:¹ for a release is not available to the tenant for years, but where there is a privity between him and him that releaseth.

§ 518. In the same manner it is, if I be disseised, and the disseisor make a lease to another for term of years, if I release to the termor, this is void: but if I confirm the estate of the termor,² this is good and effectual.

§ 519. Also, if I be disseised, and I confirm the estate of the disseisor, he hath a good and rightful estate in fee simple, albeit in the deed of confirmation no mention be made of his heirs, because he had fee simple at the time of the confirmation. For in such case, if the disseisee confirm the estate of the disseisor, to have and to hold to him and his heirs of his body engendered, or to have and to hold to him for term of his life, yet the disseisor hath a fee simple, and is seised in his demesne as of fee, because when his estate was confirmed, he had then a fee simple, and such deed cannot change his estate, without entry made upon him, &c.

§ 520. In the same manner it is, if his estate be confirmed for term of a day, or for term of an hour, he hath a good estate in fee simple, for this, that [his] estate in

¹ Instead of "me and the tenant for years," the best French texts authorize "him and me."

² Instead of "the estate of the termor," the best French texts authorize "his estate."

fee simple was once confirmed. *Quia confirmare idem est, quod firmum facere, &c.*

§ 521. Also, if my disseisor maketh a lease for life, the remainder over in fee, if I release to the tenant for life, this shall enure to him in the remainder. But if I confirm the estate of the tenant for term of life, yet after his decease I may well enter, because nothing is confirmed but the estate of the tenant for life, so that after his decease I may enter. But when I release all my right to the tenant for life, this shall enure to him in the remainder or in the reversion, because all my right is gone by such release. But in this case, if the disseisee confirm the estate and title of him in the remainder without any confirmation made to tenant for life, the disseisee cannot enter upon the tenant for term of life, for that the remainder is depending upon the estate for life; and if his estate should be defeated, the remainder should be defeated by the entry of the disseisee, and it is no reason that he by his entry should defeat the remainder against his confirmation, &c.

§ 522. Also, if there be two disseisors, and the disseisee releaseth to one of them, he shall hold his companion out of the land. But if the disseisee confirm the estate of the one, without more saying in the deed, some say that he shall not hold his companion out, but shall hold jointly with him, for that nothing was confirmed but his estate, which was joint, &c.

§ 523. And for this some have said, that if two joint-tenants be, and the one confirm the estate of the other,

that he hath but a joint estate, as he had before. But if he hath such words in the deed of confirmation, to have and to hold to him and to his heirs all the tenements whereof mention is made in the confirmation, then he hath a sole estate in the tenements, [&c.] And therefore it is a good and sure thing in every confirmation to have these words, to have and to hold the tenements, &c., in fee, or in fee tail, or for term of life, or for term of years, according as the case [is,] or the matter lieth.

§ 524. For to the intent of some, if a man letteth land to another for life, and after confirm his estate which he hath in the same land, to have and to hold his estate to him and to his heirs, this confirmation as to his heirs is void, for his heirs cannot have his estate, which was [not] but for term of his life. But if he confirm his estate by these words, to have the same land to him and to his heirs, this confirmation maketh a fee simple in this case to him in the land, for that the [words] to have and to hold, &c., goeth to the land, and not to the estate which he hath, &c.

§ 525. Also, if I let certain land to a feme sole for term of her life, who taketh husband, and after I confirm the estate of the husband and wife, to have and to hold¹ for term of their two lives; in this case the husband doth not hold jointly with his wife, but holdeth in right of his wife for term of her life. But this confirmation shall enure to the husband by way of remainder for term of his life, if he surviveth his wife.

¹ { the land. }

§ 526. But if I let land to a feme sole for term of years, who taketh husband, and after I confirm the estate of the husband and his wife, to have and to hold the land for term of their two lives: in this case they have a joint estate in the freehold of the land, for that the wife had no freehold before, &c.

§ 527. Also, if my disseisor granteth to one a rent charge out of the land whereof he disseised me, and I rehearsing the said grant confirm the same grant, and all that which is comprised within the same grant, and after I enter upon the disseisor; *quære*, in this case, if the land be discharged of the rent or no.¹

§ 528. Also, if a parson of a church charge the glebe land of his church by his deed, and after the patron and ordinary confirm the same grant, [and all that is comprised in the same grant,] then the grant shall stand in his force, according to the purport of the same grant. But in this case it behoveth that the patron hath a fee simple in the advowson; for if he hath but an estate for life or in tail, in the advowson, then the grant shall [not] stand but during his life, and the life of the parson which granted, &c.

§ 529. Also, if a man letteth land for term of life, the which tenant for life charge the land with a rent in fee, and he in the reversion confirm the same grant, the charge is good enough and effectual.

§ 530. Also, if there be a perpetual chantery, where-with the ordinary hath nothing to do or meddle; *quære*,

¹ { &c. }

if the patron of the chantery, and the chaplain of the same chantery, may charge the chantery with a rent charge in perpetuity.

§ 531. Also, in some case this verb *dedi*, or this verb *concessi*, hath the same effect in substance, and shall enure to the same intent as this verb *confirmavi*. As if I be disseised of a carve¹ of land, and I² make such a deed; *Sciant præsentes, &c., quòd dedi* to the disseisor, [*&c.*, or *quòd concessi* to the said disseisor,] the said carve, &c., and I deliver only the deed to him without any livery of seisin of the land, this is a good confirmation, and as strong in law, as if there had been in the deed this verb *confirmari, &c.*

§ 532. Also, if I let land to a man for term of years, by force whereof he is in possession, &c., and after³ I make a deed to him, &c., *quòd dedi et concessi, &c.*, the said land, to have for term of his life, and I deliver to him the deed, &c., then presently he hath an estate in the land for term of his life.

§ 533. And if I say in the deed, to have and to hold to him and to his heirs of his body engendered, he hath an estate in fee tail. And if I say in the deed, to have and to hold to him and to his heirs, he hath an estate in fee simple: For this shall enure to him by force of the confirmation to enlarge his estate.

§ 534. Also, if a man be disseised, and the disseisor

¹ *I.e.* a carucate, or a ploughland.

² { afterwards }

³ *I.e.* afterwards.

die seised, and his heir is in by descent, and after¹ the disseisee and the heir [of the disseisor] make jointly a deed to another in fee, and livery of seisin is made upon this, (as to the heir of the disseisor that sealed the deed) the tenements do pass [and enure] by the same deed by way of feoffment; and as to the disseisee who sealed the same deed, this shall enure but by way of confirmation. But if the disseisee in this case brings a writ of entry in the *per* and *cui* against the alienee of the heir of the disseisor, *quære*, how he shall plead this deed against the demandant by way of confirmation, &c. And know, my son, that it is one of the most honourable, laudable, and profitable things in our law, to have the science of well pleading in actions reals and personals; and therefore I counsel thee especially to employ² thy courage and care to learn this.³

§ 535. Also, if there be lord and tenant, albeit⁴ the lord confirm the estate which the tenant hath in the tenements, yet the seigniori remaineth entire to the lord as it was before.

§ 536. In the same manner is it if a man hath a rent-charge out of certain land, and he confirm the estate which the tenant hath in the land, yet the rent-charge remaineth to the confirmor.

§ 537. In the same manner it is, if a man hath com-

¹ *I. e.* afterwards.

² { all }
 { &c. }

⁴ Instead of "albeit," the best French texts authorize "and."

mon of pasture in other land, if he confirm the estate of the tenant of the land, nothing shall pass from him of his common; but notwithstanding this, the common shall remain to him as it was before.

§ 538. But if there be lord and tenant, which tenant holdeth of his lord by the service of fealty and twenty shillings rent, if the lord by his deed confirm the estate of the tenant, to hold by twelve pence, or by a penny, or by a halfpenny: in this case the tenant is discharged of all the other services, and shall render nothing to the lord, but that which is comprised in the same confirmation.

§ 539. But if the lord will by his deed of confirmation, that the tenant in this case shall yield to him a hawk or a rose yearly at such a feast, &c., this confirmation¹ is void, because he reserveth to him a new thing which was not parcel of his services before the confirmation: and so the lord may well by such confirmation abridge the services [by which the tenant holdeth of him], but he cannot reserve to him new services.

§ 540. Also, if there be lord, mesne, and tenant, and the tenant is an abbot, that holdeth of the mesne by certain services yearly, the which hath no cause to have acquittance against his mesne, for to bring a writ of mesne, [&c.,] in this case, if the mesne confirm the estate that the abbot hath in the land, to have and to hold the land unto him and his successors in frankal-

¹ Instead of "confirmation," the best French texts authorize "reservation."

moign, or free alms, &c., in this case this confirmation is good, and then the abbot holdeth of the mesne in frankalmoign. And the cause is, for that no new service is reserved, for all the services specially specified be extinct, and no rent is reserved [to the mesne,] but the abbot shall hold the land of him as it was before the confirmation; for he that holdeth in frankalmoign ought to do no bodily service; so [that] by such confirmation it appeareth, the mesne shall not reserve unto him any¹ new service, but that the land shall be holden of him as it was before. And in this case the abbot shall have a writ of mesne, if he be distrained in his default, by force of the said confirmation, where per case he might not have such a writ before.

§ 541. Also, if I be seised of a villein as of a villein in gross, and another taketh him out of my possession, claiming him to be his villein [there, where he hath no right to have him as his villein,] and after I confirm to him the estate which he hath in my villein, this confirmation seemeth to be void, for that none may have possession of a man as of a villein in gross, but he which hath right to have him as his villein in gross. And so in as much as he to whom the confirmation was made, was not seised of him as of his villein at the time of the confirmation made, such confirmation is void.

¹ Instead of "any," the translation in Co. Lit. has "no." Ritso's Science of the Law, 110, points out that a wrong translation of *aucun* caused the word to be "no," instead of "any." Hargrave and Butler make the amendment in their text.

§ 542. But in this case, if these words were in the deed, [&c.] *Sciatis me dedisse et concessisse, [tali,] &c., talem villanum meum*, this is good; but this shall enure by force and way of grant, and not by way of confirmation, &c.

§ 543. And¹ sometimes these verbs *dedi et concessi* shall enure by way of extinguishment of the thing given or granted; as if a tenant hold of his lord by certain rent, and the lord grant by his deed to the tenant and his heirs the rent, &c., this shall enure to the tenant by way of extinguishment, for by this grant the rent is extinct, &c.

§ 544. In the same manner it is, where one hath a rent-charge out of certain land, and he grant to the tenant of the land the rent-charge, &c. And the reason is, for that it appeareth, by the words of the grant, that the will of the donor is, that the tenant shall have the rent, &c. And in as much as he cannot have or perceive any rent out of his own land, therefore the deed shall be intended and taken for the most advantage and avail for the tenant that it may be taken, and this is by way of extinguishment.

§ 545. Also, if I let land to a man for term of years, and after I confirm his estate without putting more words in the deed, by this he hath no greater estate than for term of years, as he had before.

546. But if I release to him all my right which I have in the land without putting more [words] in the

¹ Instead of "And," the best French texts authorize "Also."

deed, he hath an estate of freehold. ¹So thou mayest understand, my son, divers great diversities between releases and confirmations.

§ 547. Also, if I being within age let land to another for term of twenty years, and after he granteth the land to another for term of ten years, so he granteth but parcel of his term: in this case when I am of full age, if I release to the grantee of my lessee, &c., this release is void, because there is no privity between him and me, &c. But if I confirm his estate, then this confirmation is good. But if my lessee grant all his estate to another, then my release made to the grantee is good and effectual.

§ 548. Also, if a man grant a rent-charge issuing out of his land to another for term of his life, and after he confirmeth his estate in the said rent, to have and to hold to him in fee tail or in fee simple; this confirmation is void as to enlarge his estate, because he that confirmeth hath not any reversion in the rent.

§ 549. But if a man be seised in fee of a rent-service or rent-charge, and he grant the rent to another for life, and the tenant attorneth, and after he confirmeth the estate of the grantee in fee tail, or in fee simple, this confirmation is good, as to enlarge his estate according to the words of the confirmation, for that he which confirmed² at the time of the confirmation had a reversion of the rent.

¹ { And }

² { the estate. }

§ 550. But in the case aforesaid, where a man grants a rent-charge to another for term of life, if he will that the grantee should have an estate in tail or fee, it behoveth that the deed of grant of the rent-charge for term of life be surrendered or cancelled, and then to make a new deed of the like rent-charge, to have and perceive to the grantee in tail or in fee, &c. *Ex paucis plurima concipit ingenium.*¹

¹Some of the earliest texts have the concluding sentence in the following form : "*Ex paucis dictis intendere plurima potes, &c.*"

CHAPTER X.

ATTORNMENT.

§ 551. Attornment is as if there be lord and tenant, and the lord will grant by his deed the services of his tenant to another for term of years, or for term of life, or in tail, or in fee, the tenant must attorn to the grantee in the life of the grantor, by force and virtue of the grant, or otherwise the grant is void. And attornment is no other in effect, but when the tenant hath heard of the grant made by his lord, that the same tenant do agree by word to the said grant, as to say to the grantee, I agree to the grant made to you, [&c.,] or I am [well] content with the grant made to you: but the most common attornment is, to say,¹ Sir, I attorn to you by force of the said grant, or I become your tenant, &c., or to deliver to the grantee a penny, or a halfpenny, or a farthing, by way of attornment.

§ 552. Also, if the lord grant the service of his tenant to one man, and after by his deed bearing a later date he grant the same services to another, and the tenant attorn to the second grantee, now the said² grantee

¹ { &c. }

² Instead of "said," the best French texts authorize "second."

hath the services; and albeit afterwards the tenant will attorn to the first grantee, this is clearly void, &c.

§ 553. Also, if a man be seised of a manor, which manor is parcel in demesne, and parcel in service, if he will alien this manor to another, it behoveth that by force of the alienation, all the tenants which hold of the alienor as of his manor¹ do attorn to the alienee, or otherwise the services remain continually in the alienor, saving the tenants at will;² for it needeth not that tenants at will do attorn upon such alienation, &c.³

§ 554. Also, if there be lord and tenant, and the tenant letteth the land to another for term of life, or giveth the land in tail saving the reversion to himself, &c., if the lord in such case grant his seigniory to another, it behoveth that he in the reversion attorn to the grantee, and not the tenant for term of life, or the tenant in tail, because that in this case he in the reversion is tenant to the lord, and not the tenant for term of life, nor the tenant in tail.

§ 555. In the same manner is it where there are lord, mesne, and tenant, if the lord will grant the services of the mesne, albeit he maketh no mention in his grant of the mesne, yet the mesne ought to attorn, [&c.,] and not the tenant prevail, &c., for that the mesne is tenant unto him, &c.

§ 556. But otherwise it is where certain land is

¹ { &c. } ² { &c. }

³ { because the same lands and tenements which they hold at will pass to the alienee by force of such alienation. }

charged with a rent charge or rent seck; for in such case if he which hath the rent charge grant this to another, it behoveth that the tenant of the freehold attorn to the grantee, for that the freehold discharged with the rent, &c. And in a rent charge, no avowry ought to be made upon any person for the distress taken, &c., but he shall avow the prisel¹ to be good and rightful, as in lands or tenements so charged with his distress, &c.

§ 557. Also, if there be lord and tenant, and the tenant letteth his tenement to another for term of life, the remainder to another in fee, and after the lord grant the services to another, &c. and the tenant for life attorn, this is good enough, for that the tenant for life is tenant in this case to the lord, &c. and he in the remainder cannot be said to be tenant to the lord, as to this intent, until after the death of the tenant for life; yet in this case if he in the remainder dieth without heir, the lord shall have the remainder by way of escheat, because that albeit the lord in such case ought to avow upon the tenant for life, &c., yet the whole entire tenement, as to all the estates of the freehold or of fee simple, or otherwise, &c., in such case are together holden of the lord, &c.

[But not to make avowry upon them all together. M. 3 H. VI.]²

§ 558. Also, if there be lord and tenant, and the tenant letteth the tenements to a woman for life, the re-

¹ *I.e.* the taking.

² Coke says: "This is added to Littleton, but it is consonant to law, and the authority truly cited."

mainder over in fee, and the woman taketh husband, and after the lord grant the services, &c., to the husband and his heirs; in this case the service is put in suspense during the coverture. But if the wife die, living the husband, the husband and his heirs shall have the rent of them in the remainder, &c. And in the case there needeth no attornment by parol, &c., for that the husband which ought to attorn, accepted the deed of grant of the services, &c., the which acceptance is an attornment in the law.

§ 559. In this same manner is it, if there be lord and tenant, and the tenant taketh wife, and after¹ the lord grant the services to the wife and her heirs,² and the husband accepteth the deed; in this case after the death of the husband the wife and her heirs shall have the services, &c., for by the acceptance [of the deed] by the husband, this is a good attornment, &c., albeit during the coverture the services shall be put in suspense, &c.

§ 560. Also, if there be lord and tenant, and the tenant grant the tenements to a man for term of his life, the remainder to another in fee, if the lord grant the services to the tenant for life [in fee,] in this case the tenant for term of life hath a fee in the services; but

¹ *I.e.* afterwards.

² Instead of "the services to the wife and her heirs," the translation in Co. Lit. has "his services to the wife and his heirs." Ritso's Science of the Law, 112. points out the proper translation. Hargrave and Butler's notes approve the amendment.

the services are put in suspense during his life. But the heirs [of the tenant for life] shall have the services after his decease, [&c.] And in this case there needeth no attornment: for by the acceptance of the deed by him which ought to attorn, &c., this is an attornment of itself.¹

§ 561. But where the tenant hath as great and as high estate in the tenements as the lord hath in the seignior; in such case, if the lord grant the services to the tenant in fee, this shall endure by way of extinguishment. *Causa patet.*

§ 562. Also, if there be lord and tenant, and the tenant maketh a lease to a man for term of his life, saving the reversion to himself, if the lord grant the seignior to tenant for life in fee, in this case it behoveth that he in reversion must attorn to the tenant for life by force of this grant, or otherwise the grant is void, for that his in the reversion is tenant to the lord, &c.

[Yet he shall not hold of the tenant for life during his life. *Causa patet, &c.*]²

§ 563. Also, if there be lord and tenant, and the tenant holdeth of the lord by xx. manner of services, and the lord grant his seignior to another; if the tenant pay in deed any parcel of any of the services to the grantee, this is a good attornment, of and for all the services, albeit the intent of the tenant was to attorn but for this

¹ { &c. }

² Coke says: "This is added, and not in the original, and is against law, and therefore to be rejected."

parcel, for that the seigniorie is¹ entire, although there be divers manners of services which the tenant ought to do, &c.

§ 564. Also, if there be lord and tenant, and the tenant holdeth of the lord by many kind of services, and the lord grant the services to another by fine; if the grantee sue a *scire facias* out of the same fine for any parcel of the services, and hath judgment to recover, this judgment is a good attornment in law for all the services.²

§ 565. Also, if the lord of a rent service grant the services to another, and the tenant attorn by a penny, and after the grantee distrain for the rent behind, and the tenant make rescous; in this case the grantee shall not have an assise for the rent, but a writ of rescous, because the giving of the penny by the tenant was not but by way of attornment, &c. But if the tenant had given to the grantee the said penny as parcel of the rent, or a halfpenny or a farthing by way of seisin of the rent, then this is a good attornment, and also it is a good seisin to the grantee of the rent; and then upon such rescous the grantee shall have an assise, &c.

§ 566. Also, if there be many joint tenants which hold by certain services, and the lord grant to another the services, and one of the joint-tenants attorn to the grantee, this is as good as if all had attorned, for that the seigniorie is entire, &c.

¹ { hnt one and }

² { &c. }

§ 567. Also, if a man letteth tenements for term of years, by force of which lease the lessee is seised, and after the lessor by his deed grant the reversion to another for term of life, or in tail, or in fee; it behoveth in such case that the tenant for years attorn, or otherwise nothing shall pass to such grantee by such deed. And if in this case the tenant for years attorn to the grantee, then the freehold shall presently pass to the grantee by such attornment without any livery of seisin, &c., because if any livery of seisin, &c., should be or were needful to be made, then the tenant for years should be at the time of the livery of seisin ousted of his possession, which should be against reason, &c.

§ 568. Also, if tenements be letten to a man for term of life, or given in tail, saving the reversion, &c., if he in ther eversion in such case grant ther eversion to another by his deed, it behoveth that the tenant of the land attorn to the grantee in the life of the grantor, or otherwise the grant is void.¹

§ 569. In the same manner is it, if land be [granted in tail, or] let to a man for term of life, the remainder to another in fee,² if he in the remainder will grant this remainder to another, &c., if the tenant of the land attorn in the life of the grantor, then the grant of such a remainder is good, or otherwise not.

§ 570. [P. 12 Edw. IV. It is there holden by the whole court, that tenant in tail shall not be compelled

¹ { &c. }

² Instead of "in fee," the best French texts give "&c."

to attorn, but if he will attorn gratis, it is good enough.]¹

§ 571. Also, if land be let to a man for years, the remainder to another for life, reserving to the lessor a certain rent by the year, and livery of seisin upon this is made to the tenant for years; if he in the reversion in this case grant the reversion to another, [&c.,] and the tenant which is in the remainder after the term of years attorn, this is a good attornment, and he to whom this reversion is granted by force of such attornment shall distrain the tenant for years for the rent due after such attornment, albeit that the tenant for years did never attorn unto him. And the cause is, for that where the reversion is depending upon an estate of freehold, it sufficeth that the tenant of the freehold do attorn upon such a grant of the reversion, &c.

§ 572. And it is to be understood, that where a lease for years or for life, or a gift in tail, is made to any man, reserving to such lessor or donor a certain rent, &c., if such lessor or donor grant his reversion to another, and the tenant of the land attorn, the rent passeth to the grantee, although that in the deed of the grant of the reversion no mention be made of the rent, for that the rent is incident to the reversion in such case, and not *è converso*, &c. For if a man will grant the rent in such case to another, reserving to him the reversion of the land, albeit the tenant attorn to the grantee, this shall be but a rent seck, &c.

¹ Coke says: "This is added to Littleton."

§ 573. Also, if a man let land to another for his life, and after he confirm by his deed the estate of the tenant for life, the remainder to another in fee, and the tenant for life accepteth the deed, then is the remainder *in fait* in him to whom the remainder is given or limited by the same deed. [For] by the acceptance of the tenant for life [of the deed,] this is an agreement of him, and so an attornment in law. But yet he in the remainder shall not have any action of waste, nor other benefit by such remainder, unless that he hath the said deed in hand, whereby the remainder was entailed or granted to him. And because that in such case the tenant for life peradventure will retain the deed to him, to this intent, that he in the remainder should not have any action of waste against him, for that he cannot come to have the deed in his possession, it will be [a] good [and sure thing] in such case for him in the remainder, that a deed indented be made by him which will make such confirmation, and the remainder over, &c., and that he which maketh such confirmation deliver one part of the indenture to the tenant for life, and the other part to him that shall have the remainder. And then he by shewing of that part of the indenture may have an action of waste against the tenant for life, and all other advantages that he in ther emainder may have in such a case, &c.

§ 574. Also, if two joint-tenants be, who let their land to another for term of life, rendering to them and to their heirs a certain yearly rent; in this case, if one

of the joint-tenants in the reversion release to the other joint-tenant in the same reversion, this release is good, and he to whom the release is made shall have only the rent of the tenant for life, and shall only have a writ of waste against him, although he never attorned by force of such release, [&c.] And the reason is, for the privacy which once was between the tenant for life and them in the reversion.

§ 575. In the same manner, and for the same cause is it, where a man letteth land to another for life, the remainder to another for life, reserving the reversion to the lessor¹; in this case if he in the reversion releaseth to him in the remainder and to his heirs all his right, &c., then he in the remainder hath a fee, &c., and he shall have a writ of waste against the tenant for life without any attornment of him, &c.

§ 576. Also, if a man let lands or tenements to another for term of years, and after he oust his termor, and thereof enfeoff another in fee, and after the tenant for years enter upon the feoffee, claiming his term, &c., and after doth waste; in this case the feoffee shall have by law a writ of waste against him, and yet he did not attorn [unto him]. And the cause is, as I suppose, for that he which hath right to have lands or tenements for years, [or otherwise,] should not by law be misconusant of the feoffments which were made of and upon the same lands, &c. And inasmuch as by such feoffment the tenant for years was [put out of his possession, and

¹ Instead of "the lessor," the best French texts authorize "him."

by his entry he caused the reversion to be to him to whom the feoffment was] made, this is a good attornment; for he to whom the feoffment was made, had no reversion before the tenant for years had entered upon him, for that he was in possession in his demesne as of fee, and by the entry of the tenant for years, he hath but a reversion, which is by the act of the tenant for years, *scil.* by his entry, &c.

§ 577. The same law is, as it seemeth, where a lease is made for life, saving the reversion to the lessor, if the lessor disseise the lessee, and make a feoffment in fee, if the tenant for life enter and make waste, the feoffee shall have a writ of waste without any other attornment, *causâ quâ suprà*, &c.

§ 578. Also, if a lease be made for life, the remainder to another in tail, the remainder over to the right heirs of the tenant for life; in this case, if the tenant for life grant his remainder in fee to another by his deed, this remainder *maintenant* passeth by the deed without any attornment, [&c.,] for that if any ought to attorn in this case, it should be the tenant for life, and in vain it were that he should attorn upon his own grant, &c.

§ 579. Also, if there be a lord and tenant, and the tenant holdeth of the lord by certain rent and knight's service, if the lord grant the services of his tenant by fine, the services are presently in the grantee by force of the fine; but yet the lord¹ may not distrain for any

¹ Hargrave and Butler's notes say: "I.e. the grantee of the

parcel of the services, without attornment: but if the tenant dieth, his heir within age, the lord shall have the albeit he never attorned, because that the seigniori was wardship of the body of the heir, and of his lands, &c., in the grantee presently by force of the fine. And also in such case, if the tenant die without heir, the lord shall have the tenancy by way of escheat.

§ 580. In the same manner it is, if a man grant the reversion of his tenant for life to another by fine, the reversion *maintenant* passeth to the grantee by force of the fine, but the grantee shall never have an action of waste without attornment, &c.

§ 581. But yet if the tenant for life alieneth in fee, the grantee may enter, &c., because the reversion was in him by force of the fine, and such alienation was to his disheritance.

§ 582. But in this case, where the lord granteth the services of his tenant by fine, if the tenant die, his heir being of full age, the grantee by the fine shall not have relief, nor shall ever distrain for relief, unless that he hath the attornment of the tenant that dieth¹: for of such a thing which lieth in distress, whereupon the writ of replevin is sued, &c., a man must and ought to avow the taking good and rightful, &c. and there there ought to be an attornment of the tenant, although the grant of such a thing be by fine: but to have the wardship of the lands or tenements so holden during the nonage of the services. . . . The grantee of the services is supposed to become law by virtue of the grant."

¹ { &c. }

heir, or to have them by way of escheat, there needs no distress, &c. but an entry into the land by force of the right of the seignior, which the grantee hath by force of the fine, &c. *Sic vide diversitatem, &c.*

§ 583. Also, if there be lord, mesne, and tenant, and the mesne grant by fine the services of his tenant to another in fee, and after the grantee die without heir, now the services of the mesnalty shall come and escheat to the lord paramount by way of escheat; [and] if afterwards the services of the mesnalty be behind, in this case he which was lord paramount may distrain the tenant, notwithstanding that the tenant did never attorn: and the cause is, for that the mesnalty was in deed in the grantee by force of the [said] fine, and the lord paramount may avow upon the grantee, because in deed he was his tenant, albeit he shall not be compelled to this, &c. But if the grantor in this case had died without heir in the life of the grantee, then he should be compelled to avow upon the grantee; and also inasmuch the lord paramount doth not claim the mesnalty by force of the grant made by fine levied by the mesne, but by virtue of his seignior paramount, [viz.] by way of escheat, he shall avow upon the tenant for the services which the mesne had, &c., albeit that the tenant did never attorn.

§ 584. In the same manner it is, where the reversion of a tenant for life is granted by fine to another in fee, and the grantee afterwards dieth without heir, now the lord hath the reversion by way of escheat; and if after

the tenant maketh waste, the lord shall have a writ of waste against him, notwithstanding that he never attorned, *causâ quâ suprà*. But where a man claimeth by force of the grant made by the fine,¹ *scil.* as heir, or as assignee, &c. there he shall not distrain [nor avow,] nor have an action of waste, &c., without attornment.

§ 585. Also, in ancient boroughs and cities, where lands and tenements within the same boroughs and cities are devisable by testament by custom and use, &c., if in such borough or city a man be seised of a rent service, or of a rent charge, and deviseth such rent or service to another by his testament, and dieth; in this case, he to whom such devise is made, may distrain the tenant for the rent or service arrear, although the tenant did never attorn.

§ 586. In the same manner is it, where a man letteth such tenements devisable to another for life, or for years, and deviseth the reversion by his testament to another in fee, or in fee tail, and dieth, and after the tenant commits waste, he to whom the devise was made shall have a writ of waste, although the tenant doth never attorn. And ther eason is, for that the will of the devisor made by his testament shall be performed according to the intent of the divisor; and if the effect of this should lie upon the attornment of the tenant,² then perchance the tenant would never attorn, and then the will of the devisor should never be performed, [&c.,]

¹ { &c. }

² { &c. }

and for this the devisee shall distrain, &c., or he shall have an action of waste, &c., without attornment. For if a man deviseth such tenements to another by his testament, *habendum sibi in perpetuum*, and dieth, and the devisee enter, he hath a fee simple, *causâ quâ suprà*;¹ yet if a deed of feoffment had been made to him by the devisor, of the same tenements, *habendum sibi in perpetuum*, and livery of seisin were made upon this, he should have an estate but for term of his life.

§ 587. Also, if a man be seised of a manor which is parcel in demesne and parcel in service, and is thereof disseised, but the tenants which hold of the manor do never attorn to the disseisor; in this case, albeit the disseisor dieth seised, and his heir is in by descent, &c., yet may the disseisee distrain for the rent behind, and have the services, &c. But if the tenants come to the disseisor and say, we become your tenants, &c. or make to him some other attornment, &c., and after the disseisor dieth seised, then the disseisee cannot distrain for the rent, &c., for that all the manor descendeth to the heir of the disseisor, &c.

§ 588. But if one holdeth of me by rent-service, which is a service in gross, [and not by reason of my manor,] and another that hath no right, claimeth the rent, and receives² and taketh the same rent of my ten-

¹ { and }

² Instead of "claimeth the rent and receives," the best French texts authorize "claimeth the same rent to receive."

ant by coercion of distress, or by other form, and disseiseth me by such taking of the rent; albeit such disseisor dieth so seised in taking of the rent, yet after his death I may well distrain the tenant for the rent which was behind before the decease¹ of the disseisor, and also after his decease. And the cause is, for that such disseisor is not my disseisor but at my election and will. For albeit he taketh the rent of my tenant, &c., yet I may at all times distrain my tenant for the rent behind,² so as it is to me but as if I will suffer the tenant to be so long time behind in payment of the same rent unto me, &c.

§ 589. For the payment of my tenant to another to whom he ought not to pay, is no disseisin to me, nor shall oust me of my rent without my will and election, &c. For although I may have an assise against such pernor, yet this is at my election, whether I will take him as my disseisor, or no. So such descents of rents in gross shall not oust the lord of his distress, but at any time he may well distrain for the rent behind, &c. And in this case, if after the distress of him which so wrongfully took the rent, I grant by my deed the service to another, and the tenant attorn, this is good enough, and the services by such grant and attornment are presently in the grantee, &c. But otherwise it is where the rent is parcel of a manor, and the disseisor

¹ Instead of "decease," the best French texts authorize "distress."

² { &c. }

dieth seised of the whole manor, as in the case next before is said, &c.

§ 590. Also, if I be seised of a manor, parcel in demesne, and parcel in service, and I give certain acres of the land, parcel of the demesne of the same manor, to another in tail, yielding to me and to my heirs a certain rent, &c., if in this case I be disseised of the manor, and all the tenants attorn and pay their rents to the disseisor, and also the said tenants in tail pay the rent, by me reserved to the disseisor, and after¹ the disseisor dieth seised, &c., and his heir enter, and is in by descent, yet in this case I may well distrain the tenant in tail and his heirs, for the rent by me reserved upon the gift, *scil.* as well for the rent being behind before the descent to the heir of the disseisor, as also for the rent which happeneth to be behind after the same descent, notwithstanding such dying seised of the disseisor, &c. And the reason is, for that when a man giveth lands² in tail, saving the reversion to himself, and he upon the said gift reserveth to himself a rent or other services, all the rent and services are incident to the reversion; and when a man hath a reversion he cannot be ousted of his reversion by the act of a stranger, unless that the tenant be ousted of his estate and possessions, &c. For as long³ as the tenant in tail and his heirs continue their possession by force of my gift, so long is the

¹ *I.e.*, afterwards.

² { to another }

³ { in this case }

reversion in me and in my heirs: and in as much as the rent and services reserved upon such gift be incident and depending upon the reversion, whosoever hath the reversion, shall have the same rent and services, &c.

§ 591. In the same manner is it, where I let parcel of the demesnes of the manor to another for term of life, or for term of years, rendering to me a certain rent, &c., albeit I be disseised of the manor, &c., and the disseisor die seised, [&c.,] and his heir be in by descent, yet I may distrain for the rent arrear *ut supra*, notwithstanding such descent: for when a man hath made such a gift in tail, or such a lease for life or for years of parcel of the demesnes of a manor, &c., saving the reversion to such donor or lessor, &c., and after he is disseised of the manor, &c., such reversion after such disseisin is severed from the manor in deed, though it be not severed in right. And so thou mayest see (my son) a diversity, where here is a manor parcel in demesne and parcel in services, which services are parcel of the same manor, not incident to any reversion, &c., and where they are incident to the reversion, &c.

CHAPTER XI.

DISCONTINUANCE.

§ 592. Discontinuance is an ancient word in the law, and hath divers significations, &c. But as to one intent it hath this signification, viz., where a man hath aliened to another certain lands and tenements, and dieth, and another hath right to have the same land or tenements, but he may not enter into them because of such an alienation, &c.

§ 593. As if an abbot be seised of certain lands or tenements in fee, and alieneth the same lands or tenements to another in fee, or in fee tail, or for term of life, and [after] the abbot dieth, his successor cannot enter into the said lands or tenements, albeit he hath right to have them as in right of his house, but he is put to his action to recover the same lands or tenements, which is called a writ; *breve de ingressu sine assensu capituli*, [&c.]

§ 594. Also, if a man be seised of land as in right of his wife, [&c.,] and thereof enfeof another, [&c.,] and dieth, the wife may not enter, but is put to her action, the which is called, *cui in vita*, &c.

§ 595. Also, if tenant in tail of certain land thereof

enfeoff another, &c., and hath issue and dieth, his issue may not enter into the land, albeit he hath title and right to this, but is put to his action, which is called a *formedon in le discender*, &c.

§ 596. Also, if there be tenant in tail, the reversion being to the donor and his heirs, if the tenant make a feoffment, [&c.,] and die without issue, he in the reversion cannot enter, but is put to his action of *formedon in le reverter*.¹

§ 597. In the same manner is it, where tenant in tail is seised of certain land whereof the remainder is to another in tail, or to another in fee. If the tenant in tail alien in fee, or in fee tail,² and after die without issue, they in the remainder may not enter, but are put to their writ of *formedon* in the remainder, &c., and for that that by force of such feoffments and alienations in the cases aforesaid, and the³ like cases, they that have title and right after the death of such a feoffor or alienor may not enter, but are put to their actions, *ut suprà*; and for this cause such feoffments and alienations are called discontinuances.

§ 598. Also, if tenant in tail be disseised, and he release by his deed to the disseisor and to his heirs all the right which he hath in the same tenements, this is no discontinuances, for that nothing of the right passeth to the disseisor, but for term of the life of tenant in tail which made the release, &c.

¹ { &c. } ² { &c. }

³ { other }

§ 599. But by the feoffment of tenant in tail, fee simple passeth by the same feoffment by force of the livery of seisin, &c.

§ 600. But by force of a release nothing shall pass but the right which he may lawfully and rightfully release, without hurt or damage to other persons who shall have right therein after his decease, &c. So there is great diversity between a feoffment of tenant in tail, and a release made by tenant in tail.

§ 601. But it is said, that if the tenant in tail in this case release to his disseisor, and bind him and his heirs to warranty,¹ and dieth, and this warranty descend to² his issue,³ this is a discontinuance, by reason of the warranty.⁴

§ 602. But if a man hath issue a son by his wife, and his wife dieth, and after he taketh another wife, and tenements are given to him and to his second wife, and to the heirs of their two bodies engendered, and they have issue another son, and the second wife dieth, and after the tenant in tail is disseised, and he release to the

¹ { &c. }

² *I.e.*, upon.

Ritso's Science of the Law, 118, says: "I would read, 'and this warranty descend upon his issue,' and not 'descend to his issue.' The distinction is between a warranty which descends as a *beneficium* to the heir, and a warranty which descends as an *onus* upon the heir. We have also to make the same correction in the sections 602, 603, 718, 736, and 739." Hargrave and Butler's notes, citing Ritso, say: "Should it not be 'upon his issue,' instead of 'to his issue'?"

³ { then }

⁴ { &c. }

disseisor, all his right, &c., and bind him and his heirs to warranty, &c., and die, this is no discontinuance to the issue in tail by the second wife, but he may well enter,¹ for that the warranty descendeth to² his elder brother, which his father had by the first wife, [&c.]

§ 603. In the same manner is it, where lands are descendable to the youngest son after the custom of Borough-English, which are entailed, &c., and the tenant in tail hath two sons, and is disseised, and he releaseth to his disseisor all his right with warranty, &c., and dieth, the younger son may enter upon the disseisor, notwithstanding the warranty for that the warranty descendeth to³ the elder son: for always the warranty shall descend to⁴ him who is heir by the common law.

§ 604. Also, if an abbot be disseised, and he releaseth to the disseisor with warranty, this is no discontinuance to his successor, because nothing passeth by this release but the right which he hath during the time that he is abbot, and the warranty is expired by his privation, or by his death.

§ 605. Also, if a man seised in the right of his wife be disseised, and he releaseth, &c., with warranty, this is no discontinuance to the wife, if she surviveth her husband, but that she may enter, &c. *Causa patet.*

§ 606. Also, if tenant in tail of certain land letteth

¹ { &c. }

² See section. 601, n. 2.

³ *Ibid.*

⁴ *Ibid.*

the same land to another for term of years, by force whereof the lessee hath thereof possession, in whose possession the tenant in tail by his deed releaseth all the right that he hath in the same land, to have and to hold to the lessee and to his heirs for ever: this is no discontinuance: but after the decease of the tenant in tail, his issue may well enter, because by such release nothing passeth but for term of the life of the tenant in tail.

§ 607. In the same manner it is, if the tenant in tail confirm the estate of the lessee for years, to have and to hold to him and to his heirs, this is no discontinuance, for that nothing passeth by such confirmation but the estate which the tenant in tail hath for term of his life, &c.

§ 608. Also, if tenant in tail after such lease grant the reversion in fee by his deed to another, and willeth that after the term ended, that the same land shall remain to the grantee and his heirs for ever, and the tenant for years attorn, this is no discontinuance. For such things which pass in such cases of tenant in tail only by way of grant, or by confirmation, or by such release, nothing can pass to make an estate to him to whom such grant, or confirmation, or release is made, but that which the tenant in tail may rightfully make, and this is but for term of his life, &c.

§ 609. For if I let land to a man for term of his life, &c., and the tenant for life letteth the same land to another for term of years, &c., and after my tenant for life grant the reversion to another in fee, and the

tenant for years attorn, in this case the grantee hath in the freehold but an estate for term of the life of his grantor, &c., and I which am in the reversion of the fee simple may not enter by force of this grant of the reversion made by my tenant for life, for that by such grant my reversion is not discontinued, but always remains unto me, as it was before, notwithstanding such grant of the reversion made to the grantee, to him and to his heirs, &c., because nothing passed by force of such grant, but the estate which the grantor hath, &c.

§ 610. In the same manner is it, if tenant for term of life by his deed confirm the estate of his lessee for years, to have and to hold to him and his heirs, or release to his lessee and his heirs, yet the lessee for years hath an estate but for term of the life of the tenant for life, &c.

§ 611. But otherwise it is when tenant for life maketh a feoffment in fee, for by such a feoffment the fee simple passeth. For tenant for years may make a feoffment in fee, and by his feoffment the fee simple shall pass, and yet he had at the time of the feoffment made but an estate for term of years, &c.

§ 612. Also, if tenant in tail grant his land to another term of the life of the said tenant in tail, and deliver to him seisin, &c., and after by his deed he releaseth to the tenant and to his heirs all the right which he hath in the same land; in this case the estate of the tenant of the land is not enlarged by force of such release, for that when the tenant had the estate in the land

for term of the life of the tenant in tail, he had then all the right which tenant in tail could rightfully grant or release,¹ so as by this release no right passeth, in as much as his right was gone before.

§ 613. Also, if tenant in tail by his deed grant to another all his estate which he hath in the tenements to him entailed, to have and to hold all his estate to the other, and to his heirs for ever, and deliver to him seisin, accordingly; in this case the tenant to whom the alienation was made hath no other estate but for term of the life of tenant in tail. And so it may be well proved that tenant in tail cannot grant nor alien, nor make any rightful estate of freehold to another person, but for term of his own life only, &c.

§ 614. For if I give land to a man in tail, saving the reversion to myself, and after the tenant in tail enfeofeth another in fee, the feoffee hath no rightful estate in the tenements for two causes. One is, for that by such feoffment my reversion is discontinued, the which is a wrong and not a rightful act. Another cause is, if the tenant in tail dieth, and his issue bring a writ of *formedon* against the feoffee, the writ and also the declaration shall say, &c., that the feoffee by wrong him deforces, &c. *Ergo* if he deforceth him by wrong, he hath no right estate.

§ 615. Also, if land be let to a man for term of his life, the remainder to another in tail, if he in the remainder will grant his remainder to another in fee by

¹ { &c. }

his deed, and the tenant for life attorn, this is no discontinuance of the remainder.¹

§ 616. Also, if a man hath a rent-service or rent-charge in tail, and he grant the said rent to another in fee, and the tenant attorn,² this is no discontinuance, &c.

§ 617. Also, if a man be tenant in tail of an advowson in gross, or of a common in gross, if he by his deed will grant the advowson or common to another in fee, this is no discontinuance; for in such cases the grantees have no estate but for term of the life of tenant in tail that made the grant, &c.

§ 618. And note, that of such things as pass by way of grant, by deed made in the country,³ and without livery, there such grant maketh no discontinuance, as in the cases aforesaid, and in other like cases, &c. [And] albeit such things be granted in fee, by fine levied in the king's court, &c., yet this maketh not a discontinuance, &c.

§ 619. Note, if I give land to another in tail, and he letteth the same land to another for term [of years, and after the lessor granteth the reversion to another in fee, and the tenant for years attorn to the grantee, and the term expireth during the life of the tenant in tail, by which the grantee enter, and after the tenant in tail hath issue and die; in this case this is no discontinuance, not-

¹ { &c. }

² { &c. }

³ { &c. }

withstanding the grant be executed in the life of the tenant in tail, for that at the time of the lease made for years, no new fee simple was reserved in the lessor, but the reversion remained to him in tail, as it was before the lease made.]¹

§ 620. [But if the tenant in tail make a lease for term] of the life of the lessee, &c., in this case the tenant in tail hath made a new reversion of the fee simple in him;² because when he made the lease for life, &c., he discontinued [the tail, &c., by force of the same lease, and also he discontinued] my reversion, &c. And it behoveth that the reversion of the fee simple be in some person in such case: and it cannot be in me which am the donor, in as much as my reversion is discontinued; *ergo* the reversion of the fee ought to be in the tenant in tail, who discontinued my reversion by lease, &c. And if in this case the tenant in tail grant by his deed this reversion in fee to another, and the tenant for life at-torn, &c., and after the tenant for life dieth, living the tenant in tail, and the grantee of the reversion enter, &c., in the life of the tenant in tail, then this is a discontinuance in fee; and if after the tenant in tail dieth,

¹ Coke says: "This is added to Littleton, and not in the original."

Coke rejects the whole section; but in the earlier texts the introductory words of this section appear as the introductory words of the section succeeding.

² Instead of "hath made a new reversion of the fee simple on him," the best French texts authorize "hath thereof made a new reversion in fee simple."

his issue may not enter, but is put to his writ of *formedon*. And the cause is, for that he which hath the grant of such reversion in fee simple, hath the seisin and execution of the same lands or tenements, to have to him and to his heirs in his demesne as of fee, in the life of the tenant in tail. [And this is by force of the grant of the said tenant in tail.]

§ 621. [In the same manner shall it be, if in the case aforesaid the tenant for term of life after the attornment to the grantee had aliened in fee, and the grantee had entered by forfeiture of his estate, and after the tenant in tail had died, this is a discontinuance, *causâ quâ suprâ*.]¹

§ 622. But in this case, if tenant in tail that grants the reversion, &c., dieth, leaving the tenant for life, and after the tenant for life dieth, and after he to whom the reversion was granted enter, &c., then this is no discontinuance, but that the issue of the tenant in tail may well enter upon the grantee of the reversion; because the reversion which the grantee had, &c., was not executed, &c., in the life of the tenant in tail, &c. And so there is a great diversity when tenant in tail maketh a lease for years, and where he maketh a lease for life; for in the one case he hath a reversion in tail, and in the other case he hath a reversion in fee.

§ 623. For if land be given to a man and to his heirs male of his body engendered, who hath issue two sons, and the eldest son hath issue a daughter and dieth, [and

¹ Coke says : " This is added in this place."

the tenant in tail maketh a lease for years and die,] now the reversion descendeth to the younger son, for that the reversion was but in the tail, and the youngest son is heir male, &c. But if the tenant had made a lease for life, &c., and after died, now the reversion descendeth to the daughter of the elder brother, for that the reversion is in the fee simple, and the daughter is heir general, &c.

§ 624. Also, if a man be seised in tail of lands devisable by testament, &c., and he deviseth this to another in fee, and dieth, and the other enter, &c., this is no discontinuance, for that no discontinuance was made in the life of the tenant in tail, &c.

§ 625. Also, if land be given in tail, saving the reversion to the donor, and after the tenant in tail by his deed enfeof the donor, to have and to hold to him and to his heirs for ever, and deliver to him seisin accordingly, &c., this is no discontinuance, because none can discontinue the estate tail, unless he discontinueth the reversion of him who hath the reversion, &c., or remainder, if any hath the remainder, &c. And inasmuch as by such feoffment made to the donor (the reversion then being in him) his reversion was not discontinued nor altered, &c., this feoffment is no discontinuance, &c.

§ 626. In the same manner is it, where lands are given to a man in tail, the remainder to another in fee, and the tenant in tail enfeof him that is in the remainder, to have and to hold to him and to his heirs; this is no discontinuance, *causâ quâ suprâ*.

§ 627. Also, if an abbot hath a reversion, or a rent service, or a rent charge, and he will grant this reversion, or rent service, or rent charge,¹ to another in fee, and the tenant attorn, &c., this is no discontinuance.

§ 628. In the same manner where an abbot is seised of an advowson, or of such things which pass by way of grant without livery of seisin, &c.

§ 629. Also, if tenant in tail letteth his land to another for life, and after he granteth in fee the reversion to another, and the tenant attorn: and after the tenant for life alien in fee, and the grantee of the reversion enter, &c., in the life of the tenant in tail, and after the tenant in tail dieth, his issue shall not enter, but is put to his writ of *formedon*, because the reversion in fee simple which the grantee² had by the grant of the tenant in tail, was executed in the life of the same tenant in tail, and therefore it is a discontinuance in fee, &c.

§ 630. And note, that some make discontinuances for term of life. As if tenant in tail make a lease for life, saving the reversion to him as long as the reversion is to the tenant in tail, or to his heirs; this is no discontinuance, but during the life of the tenant for life, &c. And if such tenant in tail giveth the lands to another in

¹ Instead of "this reversion, or rent service, or rent charge," the best French texts authorize "one of these."

² Instead of "grantee," the translation in Co. Lit. has "grantor." The error is pointed out in Ritso's *Science of the Law*, 118; and Hargrave and Butler's notes, citing Ritso, say that "'grantor' seems printed by mistake instead of 'grantee.'"

tail, saving the reversion, then this is a discontinuance during the second tail, &c.

§ 631. But where the tenant in tail maketh a lease for years, or for life, the remainder to another in fee, and delivereth livery of seisin accordingly, this is a discontinuance in fee, for that the fee simple passeth by force of the livery of seisin, &c.

§ 632. And it is to be understood, that some such discontinuances are made upon condition, &c., and for that the conditions be broken, &c., or for other causes, according to the course of law, such estates are defeated, then are the discontinuances defeated, and shall not by force of them take any man from his entry, &c. [As if the husband be seised of certain land in right of his wife, and maketh a feoffment in fee upon condition, and dieth, if the heir after enter upon the feoffee for the condition broken, the entry of the wife was congeable upon the heir, for that by the entry of the heir the discontinuance is defeated, as is adjudged.]¹

§ 633. Also, if a woman inheritrix hath a husband who is within age, and he being within age maketh a feoffment of the tenements of his wife in fee, and dieth, it hath been a question if the wife may enter or not, &c. And it seemeth to some, that the entry of the wife after the death of her husband, is congeable in this case. For when her husband made such feoffment, &c., he might well enter, notwithstanding such feoffment, &c., during the coverture; and he could not enter in his own right,

¹ In the earliest texts, section. 637 is given at this place.

but in the right of his wife: *ergo*, such right as he had to enter in the right of his wife, &c., this right of entry remaineth to the wife after his decease.

§ 634. And it hath been said, that if two joint-tenants, being within age, make a feoffment in fee, and one of the infants die, and the other surviveth; in as much as both the infants might enter jointly in their lives, this right accrueth all to him which surviveth, and therefore he that surviveth may enter into the whole, &c. And also the heir of the husband which made the feoffment within age cannot enter, &c., because no right descendeth to such heir in the case aforesaid, for that the husband had never any thing but in right of his wife, &c.

§ 635. And also when an infant make a feoffment being within age, this shall neither grieve nor hurt him, but that he may well enter, &c., for it should be against reason that such feoffment made by him that was not able to make such a feoffment shall grieve or hurt another, to take them from their entry, &c. And for these reasons it seemeth to some, that after the death of such husband so being within age at the time of the feoffment, &c., that his wife may well enter, &c.

§ 636. Also, if a woman inheritrix taketh husband, and they have issue a son, and the husband dieth, and she takes another husband, and the second husband letteth the land which he hath in right of his wife to another for term of his life, and after the wife dieth, and after the tenant for life surrendereth his estate to the

second husband, &c., *quære*, if the son of the wife may enter in this case upon the second husband during the life of the tenant for life, [&c.] But it is clear law, that after the death of the tenant for life, the son of the wife may enter; because the discontinuance, which was only for term of life, is determined, &c., by the death of the same tenant for life.¹

§ 637. [Note, that an estate tail cannot be discontinued, but there where he that makes the discontinuance was once seised by force of the tail, unless it be by reason of a warranty, &c. As] if there be grandfather, father, and son, [and the grandfather is tenant in tail, and is disseised by the father who is his son,] and the father maketh a feoffment of this without warranty and die, and afterwards the grandfather dies, the son may well enter upon the feoffee, because this was no discontinuance, inasmuch as the father was not seised by force of the entail at the time of the feoffment, &c., but was seised in fee by the disseisin of the grandfather.²

§ 638. Also, if tenant in tail make a lease to another for term of life, and the tenant in tail hath issue and dieth, and the reversion descendeth to his issue, and after³ the issue granteth the reversion, to him descended, to another in fee, and the tenant for life attorn and die, and the grantee of the reversion enter, &c.,⁴ and is seised

¹ { &c. }

² In the earliest texts this section appears at the end of section 632.

³ *I.e.* afterwards.

⁴ Instead of "attorn and die, and the grantee of the reversion

in fee in the life of the issue, and after the issue in tail hath issue a son and dieth, it seems that this is no discontinuance to the son, but that the son may enter, &c., for that his father, to whom the reversion of the fee simple descended, had never any thing in the land by force of the entail, &c.

§ 639. For if a man seised in the right of his wife, letteth the same land to another for term of life, now is the reversion of the fee simple to the husband, &c. And if the husband dieth, living his wife and the tenant for life, [and] the reversion descend to the heir of the husband, if the heir of the husband grant the reversion to another in fee, and the tenant attorn, &c., and afterwards the tenant for life dieth, and the grantee of the reversion in this case enter: [in this case] this is no discontinuance to the wife, but she may well enter upon the grantee, &c., because the grantor had nothing at the time of the grant, in the right of the¹ wife when he made the grant of the reversion.

§ 640. And so it seemeth, that men which are inheritable by force of an entail, and never were seised by force of the same entail, that such feoffments or grants

enter, &c.," the best French texts authorize "attorn, &c., and afterwards the tenant for term of life die, and he in the reversion enter, &c."

¹ Instead of "the" the translation in Co. Lit. has "his." Ritso's Science of the Law, 113, points out the proper reading, saying that "it is not the husband who is here spoken of, but the heir of the husband." Hargrave and Butler's notes approve the amendment, saying that "here 'his' seems to be printed by mistake, instead of 'the.'"

by them made without clause of warranty, is no discontinuance to their issues after their decease, but that their issue may well enter, &c., albeit they which made such grants in their lives were forebarred to enter by their own act, &c.

§ 641. And if tenant in tail hath issue two sons, and the eldest disseiseth his father, and thereof maketh a feoffment in fee without clause of warranty, and die without issue, and after the father die, the youngest son may well enter upon the feoffee; for that the feoffment of his elder brother cannot be a discontinuance, because he was never seised by force of the same tail. For it seemeth to be against reason, that by matter in fact, &c., without clause of warranty, a man should discontinue a tail,¹ &c., that was never seised by force of the same tail.²

§ 642. Note,³ if there be lord and tenant, and the tenant giveth lands to another in [tail, the remainder to another in] fee⁴ and after⁵ the tenant in tail makes a lease to a man for term of life, &c., saving the reversion, &c., and after granteth the reversion to another in fee,

¹ Instead of "tail," the translation in Co. Lit. has "deed." Coke, however, says: "This is mistaken, and should be, 'a man should discontinue a tail'; and so is the original." The same amendment is suggested in Ritso's Science of the Law, 118, and approved in Hargrave and Butler's notes; and it is required by the earliest texts.

² { &c. }

³ Instead of "Note," the best French texts authorize "Also."

⁴ { tail }

⁵ *I.e.* afterwards.

and the tenant for life attorn, &c., and after the grantee of the reversion die without heir, now the same reversion cometh to the lord by way of escheat. If in this case the tenant for life dieth, and the lord by force of his escheat enter in the life of tenant in tail, and after the tenant in tail dieth, it seemeth in this case that this is no discontinuance to the issue in tail, nor to him in the remainder, but that he may well enter, because the lord is in by way of escheat, and not by the tenant in tail. But otherwise it should be if the reversion had been executed in the grantee, in the life of tenant in tail, for then had the grantee been in the tenements by the tenant in tail, &c.

§ 643. Also, if a parson of a church, or vicar of a church alien certain lands or tenements parcel of his glebe, &c., to another in fee, and die or resign, &c., his successor may well enter, notwithstanding such alienation, as is said in a *Nota 2 H. IV., Termino Mich.*, which beginneth thus:

§ 644. *Nota quod dictum fuit pro lege*, in a writ of account brought by a master of a college against a chaplain, that if a parson, or vicar, grant certain land which is of the right of his church to another and die, or changeth, the successor may enter, &c. And I take the cause to be, for that the parson, or vicar, that is seised, &c., as in right of his church, hath no right of the fee simple in the tenements, nor¹ the right of the fee simple

¹ Instead of "nor," the translation in Co. Lit. has "and "; but the earliest texts authorize "or," and apparently Coke

abideth in another person; and for this cause his successor may well enter, notwithstanding such alienation, &c.

§ 645. For a bishop may have a writ of right of [the tenements of the right of his church, for that the right is in his chapter, and the] fee simple abideth in him and in his chapter. And a dean may have a writ of right, because the right remains in him. [And an abbot may have a writ of right, for that the right remains in him] and in his covent. And a master of an hospital may have a writ of right, because the right remaineth in him and in his confreres, &c. And so of other like¹ cases.² But a parson or vicar cannot have a writ of right, &c.

§ 646. But the highest writ that they can have is the writ of *juris utrùm*, which is a great proof that the right of fee is not in them nor in any others, &c. But the right of the fee simple is in abeyance, that is to say, that it is only in the remembrance, intendment, and consideration of the law, &c., for it seemeth to me, that such a thing and such a right which is said in divers books to be in abeyance, is as much as to say in Latin, (*scil.*) *Talis res, vel tale rectum, quæ vel quod non est in homine, adtunc superstitie, sed tantummodo est et consistit in considera-*

understood that "or" is the proper reading, for he says: "The fee simple is in abeyance, as Littleton saith."

¹ Instead of "other like cases," the best French texts authorize "others in like cases."

² { &c. }

tione et intelligentiâ legis, et quod alii dixerunt, talem rem and tale rectum fore in nubibus. [But I suppose, that they mean by these words (*in nubibus, &c.*)] as I have said before.¹

§ 647. Also, if a person of a church dieth, now the freehold of the glebe of the parsonage is in none during the time that the parsonage is void, but in abeyance, viz. in consideration and in the understanding of the law, until another be made parson of the same church; and immediately when another is made parson, the freehold in deed is in him as successor.²

§ 648. Also, some peradventure will argue and say, that inasmuch as a parson, with the assent of the patron and ordinary, may grant a rent charge out of the glebe of the parsonage in fee, and so charge the glebe of the parsonage perpetually, *ergo* they have a fee simple, or two or one of them have a fee simple at the least.³ To this may be answered, that it is a principle in law, that of every land there is a fee simple, &c., in some body, or otherwise the fee simple is in abeyance.⁴ And there is another principle, that every land of fee simple may be charged with a rent-charge in fee by one way or other. And when such rent is granted by the deed of the parson, and the patron, and ordinary, &c., in fee, none shall have prejudice or loss by force of such grant, but the

¹ { &c. }

² { &c. }

³ { &c. }

⁴ { &c. }

grantors in their lives and the heirs of the patron, and the successors of the ordinary after their decease. And after such charge if the parson die, his successor cannot come to the said church to be parson of the same by the law, but by the presentment of the patron and admission and institution of the ordinary.¹ And for this cause the successor ought to hold himself content, and agree to that which his patron and the ordinary have lawfully done before, &c. But this is no proof that the fee simple, &c., is in the patron and the ordinary, or in either of them, &c. But the cause that such grant of rent-charge² is good, is for that they who have the interest, &c., in the said church, viz., the patron, according to the law temporal, and the ordinary according to the law spiritual, were assenting or parties to such charge, &c. And this seemeth to be the true cause why such glebe may be charged in perpetuity, [&c.]

§ 649. Also, if tenant in tail hath issue and is disseised, and after he releaseth by his deed all his right to the disseisor: in this case no right of tail can be in the tenant in tail, because he hath released all his right. And no right can be in the issue in tail during the life of his father. And such right of the inheritance in the tail is not altogether expired by force of such release, &c. *Ergo*, it must needs be that such right remain in abeyance,³ *ut supra*, during the life of tenant in tail

¹ { &c. }

² { &c. }

³ { &c. }

that releaseth, &c., and after his decease such right presently is in his issue in deed, &c.

§ 650. In the same manner it is, where tenant in tail grant all his estate to another; in this case the grantee hath no estate but for term of life of the tenant in tail, and the reversion of the tail is not in the tenant in tail, because he hath granted all his estate and his right, &c. And if the tenant to whom the grant was made make waste, the tenant in tail shall not have a writ of waste, for that no reversion is in him. But the reversion and inheritance of the tail, during the life of the tenant in tail, is in abeyance, that is to say, only in the remembrance, consideration, and intelligence of the law.¹

§ 651. Also, if a bishop alien lands which are parcel of his bishopric, and die, this is a discontinuance to his successor, because he cannot enter, but is put to his writ of *de ingressu sine assensu capituli*.

§ 652. Also, if a dean alien lands which he hath in right of him and his chapter,² and dieth, his successor may enter.³ But if the dean be sole seised as in right of his deanry, then his alienation is a discontinuance to his successor, as is said before.

§ 653. Also, peradventure some will argue and say, that if an abbot and his convent be seised in their

¹ { &c. }

² Instead of "which he hath in right of him and his chapter," the best texts authorize "parcel of his deanery."

³ Instead of "may enter," the best French texts authorize "cannot enter, but can have a writ *De ingressu sine assensu episcopi et capituli*, &c."

demesne as of fee of certain lands to them and to their successors, &c., and the abbot without the assent of his convent alien the same lands to another and die, this is a discontinuance to his successor, &c.

§ 654. By the same reason they will say, that where a dean and chapter are seised of certain lands to them and their successors, if the dean alien the same lands, &c., this shall be a discontinuance to his successor, so as his successor cannot enter, &c. To this it may be answered, that there is a great diversity between these two cases.

§ 655. For when an abbot and the convent are seised, yet if they be disseised, the abbot shall have an assise in his own name, without naming the convent, &c. And if any will sue a *præcipe quòd reddat*, &c., of the same lands when they were in the hands of the abbot and convent, it behoveth that such action real be sued against the abbot only, without naming the convent,¹ because they are all dead persons in law but the abbot, who is the sovereign, &c. And this is by reason of the sovereignty, for otherwise he should be but as one of the other monks of the convent, &c.

§ 656. But dean and chapter are not dead persons in law, &c., for every of them may have an action by himself in divers cases. And of such lands or tenements as the dean and chapter have in common, &c., if they be disseised, the dean and chapter shall have an assise, and not the dean alone, [&c.] And if another will have an

¹ { &c. }

action real for such lands or tenements against the dean, &c., he must sue against the dean and chapter, and not against the dean alone, &c., and so there appeareth a great diversity between the two cases, &c.

§ 657. Also, if the master of an hospital discontinue certain land of his hospital, his successor cannot enter, but is put to his writ of *de ingressu sine assensu confratrum et consororum*,¹ &c. And all such writs fully appear in the Register, &c.

§ 658. Also, if land be let to a man for term of his life, the remainder to another in tail, saving the reversion to the lessor, and after he in the remainder disseiseth the tenant for term of life, and maketh a feoffment to another in fee, and after dieth without issue, and the tenant for life dieth; it seemeth in this case, that he in the reversion may well enter upon the feoffee, because he in the remainder which made the feoffment was never seised in tail by force of the same remainder, &c.

¹ Instead of "*consororum*," the best French texts give "*sororum*;"

CHAPTER XII.

REMITTER

§ 659. Remitter is an ancient term in the law, and is where a man hath two titles to lands or tenements, viz., one a more ancient title, and another a more latter title, and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthy title. And then when a man is adjudged in by force of his elder title, this is said a remitter in him, for that the law doth admit him to be in the land by the elder and surer title. As if tenant in tail discontinue the tail, and after he disseiseth his discontinuee, and so dieth seised, whereby the tenements descend to his issue or cousin inheritable by force of the tail, in this case, this is to him to whom the tenements descend, who hath right by force of the tail, a remitter to the tail, because the law shall put and adjudge him to be in by force of the tail, which is his elder title: for if he should be in by force of the descent, then the discontinuee might have a writ of entry *sur disseisin* in the *per* against him, and should recover the tenements and

his damages, [&c.] But inasmuch as he is in his remitter by force of the tail, the title and interest of the discontinuee is quite taken away and defeated, &c.

§ 660. Also, if tenant in tail enfeoff his son in fee, or his cousin inheritable by force of the tail, which son or cousin at the time of the feoffment is within age, and after the tenant in tail dieth, and he to whom the feoffment was made is his heir by force of the tail; this is a remitter to the heir in tail to whom the feoffment was made. For albeit that during the life of the tenant in tail who made the feoffment, such heir shall be adjudged in by force of the feoffment, yet after the death of tenant in tail, the heir shall be adjudged in by force of the tail, and not by force of the feoffment. For although such heir¹ were of full age at the time of the death of the tenant in tail who made the feoffment, this makes no matter, if the heir were within age at the time of the feoffment made unto him. And if such heir being within age at the time of such feoffment, cometh to full age, living the tenant in tail that made the feoffment, and so being of full age he charges by his deed the same land with a common of pasture, or with a rent-charge, and after the tenant in tail dieth; now it seemeth that the land is discharged of the common, and of the rent, for that the heir is in of another estate in the

¹ Ritso's Science of the Law, 113-114. says: "The words 'for although such heir,' &c., would have been more accurately written, 'and although such heir,' &c., for this is rather an amplification than a conclusion."

land than he was at the time of the charge made, inas-much as he is in his remitter by force of the tail, and so the estate which he had at the time of the charge is utterly defeated, [&c.]

§ 661. Also a principal cause why such heir in the cases aforesaid, and other like cases, shall be said in his remitter, is for that there is not any person against whom he may sue his writ of *formedon*: for against himself he cannot sue, and he cannot sue against any other, for none other is tenant of the freehold; and for this cause the law doth adjudge him in his remitter, *scil.* in such plight as if he had lawfully recovered the same land against another, &c.

§ 662. Also, if land be entailed to a man and to his wife, and to the heirs of their two bodies begotten, who have issue a daughter, and the wife dieth, and the husband taketh another wife, and hath issue another daughter, and discontinue the tail, and after he disseiseth the discontinuee and so die seised, now the land shall descend to the two daughters. [And] in this case as to the eldest daughter, who is inheritable by force of the tail, this is [no²] remitter but of the moiety. And as to the other moiety, she is put to sue her action of *formedon* against her sister. For in this case the two sisters are not tenants in parcenary, but they are tenants in common, for that they are in by divers titles. For the one sister is in her remitter by force of the entail, as to that which to her belongeth; and the other sister is in,

as to that which to her belongeth, in fee simple by the descent of her father, [&c.]

§ 663. In the same manner it is if tenant in tail enfeoff his heir apparent in tail (the heir being within age) and another joint-tenant in fee, and the tenant in tail dieth; now the heir in tail is in his remitter as to the one moiety, and as to the other moiety he is put to his writ of *formedon*, [&c.]

§ 664. Also, if tenant in tail enfeoff his heir apparent, the heir being of full age at the time of the feoffment, and after tenant in tail dieth, this is no remitter to the heir, because it was his folly that being of full age he would take such feoffment, &c. But such folly cannot be adjudged in the heir being within age¹ at the time of the feoffment, &c.

§ 665. Also, if tenant in tail enfeoff a woman in fee and dieth, and his issue within age taketh the same woman to wife; this is a remitter to the infant [within age,] and the wife then hath nothing, for that the husband and his wife are but as one person in law. And in this case the husband cannot sue a writ of *formedon*, unless he will sue against himself, which should be inconvenient; and for this cause the law adjudgeth the heir in his remitter, for that no folly can be adjudged in him being within age at the time of the espousals, &c. And if the heir be in his remitter by force of the entail, it followeth by reason that the wife hath nothing, &c. For inasmuch as the husband and wife be as one

¹ { &c. }

person, the land cannot be parted by moieties; and for this cause the husband is in his remitter of the whole. But otherwise it is if such heir were of full age at the time of espousals, for then the heir hath nothing but in right of his wife, [&c.]

§ 666. Also if a woman seised of certain land in fee taketh husband, who alieneth the same land to another in fee,¹ the alienee letteth the same land to the husband and wife for term of their two lives, saving the reversion to the lessor and to his heirs; in this case the wife is in her remitter, and she is seised in deed in her demesne as of fee, as she was before, because the taking back of the estate shall be adjudged in law the fact of the husband, and not the fact of the wife; so no folly can be adjudged in the wife, which is covert in such case: And in this case the lessor hath nothing in the reversion, for that the wife is seised in fee, [&c.]

§ 667. But in this case if the lessor will sue an action of waste against the husband and his wife, for that the husband hath committed waste, the husband cannot bar the lessor by shewing this, that the taking back of the estate to him and to his wife was a remitter to his wife, because the husband is stopped to say that which is against his own feoffment, and taking back of the estate for term of life to him and to his wife: And yet the lessor hath no reversion, for that the fee simple is in the wife. And so a man may see one thing in this case, that

¹ { and }

a man shall be stopped by matter in fact, though there be no writing by deed indented or otherwise.

§ 668. But if in the action of waste the husband make default to the grand distress, and the wife pray to be received, and is received, she may well shew the whole matter, and how she is in her remitter, and she shall bar the lessor of his action, [&c.]

§ 669. For in every case where the wife is received for default of her husband, she shall plead and have the same advantage in pleading, as she were a woman sole, &c. And albeit that the alienee made the lease to the husband and wife by deed indented, yet this is a remitter to the wife. And also albeit the alienee rendereth the same land to the husband and his wife by fine for term of their lives, yet this is a remitter to the wife, because a feme covert which takes an estate by fine, shall not be examined by the justices, [&c.]

§ 670. And here note, that when any thing shall pass from the wife which is covert of a husband, by force of a fine, as if the husband and wife make conusance of right to another, &c., or make a grant and render to another, or release by fine unto another, *et sic de similibus*, where the right of the wife shall pass from the wife by force of the same fine; in all such cases the wife shall be examined before the fine be taken, because that such fines shall conclude such femes coverts for ever, [&c.] But where nothing is moved in the fine but only that the husband and wife do take an estate by force of the said

fine, this shall not conclude the wife, for that in such case she shall not be at all examined, [&c.]

§ 671. Also if tenant in tail discontinue the tail, and hath issue a daughter, and dieth, and the daughter being of full age taketh husband, and the discontinuee make a release of this to the husband and wife for term of their lives, this is a remitter to the wife, and the wife is in by force of the tail, *causâ quâ suprâ*, &c.

§ 672. Also if land be given to the husband and to his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after¹ the husband alien the land in fee, and take back an estate to him and to his wife for term of their two lives; in this case this is a remitter in deed to the husband and to his wife, mauger the husband. For it cannot be a remitter in this case to the wife, unless it be a remitter to the husband, because the husband and wife are all one same person in law,² though the husband be stopped to claim it. And therefore this is a remitter against his own alienation and reprisal, as is said before.

§ 673. Also, if land be given to a woman in tail, the remainder to another in tail, the remainder to the third in tail, the remainder to the fourth in fee, and the woman taketh husband, and the husband discontinue the land in fee; by this discontinuance all the remainders

¹ *I.e.* afterwards.

² According to the best French texts, the remainder of the section should be translated, "though the husband be estopped to claim this to be a remitter in him against his alienation and his own reprisal, as is said before."

are discontinued. For if the wife die without issue, they in the remainder shall not have any remedy but to sue their writs of *formedon* in the remainder, when it comes to their times.¹ But if after such discontinuance, an estate be made to the husband and wife for term of their two lives, or for term of another man's life, or other estate, &c., for that this is a remitter to the wife, this is also a remitter to all them in the remainder. For after that, that the wife which is in her remitter be dead without issue, they in the remainder may enter, &c., without any action suing, &c. In the same manner is it of those which have the reversion after such entails.²

§ 674. Also, if a man let a house to a woman for term of her life, saving the reversion to the lessor, and after one sue a feigned and false action against the woman, and recovereth the house against her by default, so as the woman may have against him a *quod ei deforceat*, according to the statute of Westminster II., now the reversion of the lessor is discontinued, so that he cannot have any action of waste. But in this case if the woman take husband, and he which recovereth let the house to the husband and his wife for term of their two lives, the wife is in her remitter by force of the first lease.

§ 675. And if the husband and wife make waste, the first lessor shall have a writ of waste against them, for that inasmuch as the wife is in her remitter, he is re-

¹ { &c. }

² { &c. }

mitted to his reversion. But it seemeth in this case, if he that recovereth by the false action, will bring another writ of waste against the husband and his wife, the husband hath no other remedy against him, but to make default to the grand distress, &c., and cause the wife to be received, and to plead this matter against the second lessor, and shew how the action whereby he recovered was false and feigned in law, &c., so the wife may bar him, &c.

§ 676. Also, if the husband discontinue the land of his wife, and after taketh back an estate to him and to his wife, and to a third person for term of their lives, or in fee, this is [no] remitter to the wife, but as to the moiety; and for the other moiety she must after the death of her husband sue a writ of *cui in vitâ*.¹

§ 677. Also, if the husband discontinue the land of his wife, and goeth beyond sea, and the discontinuee let the same land to the wife for term of her life, and deliver to her seisin: and after² the husband cometh [back,] and agreeth to this livery of seisin, this is a remitter to the wife: and yet if the wife had been sole at the time of the lease made to her, thi should not be to her a remitter. But inasmuch as she was covert baron at the time of the lease, and livery of seisin made unto her, albeit she taketh only the livery of seisin, this was a remitter to her because a feme covert shall be adjudged as an infant within age in such a case, &c.

¹ { &c. }

² *I.e.* afterwards.

Quære in this case if the husband when he comes back will disagree to the lease and livery of seisin made to his wife in his absence, if this shall oust his wife of her remitter [or not, &c.]

§ 678. Also, if the husband discontinue the lands of his wife, and the discontinuee is disseised, and after the disseisor letteth the same lands to the husband and wife for term of life, this is a remitter to the wife. But if the husband and his wife were of covin and consent that the disseisin should be made, then it is no remitter to his wife, because she is a disseisoress. But if the husband were of covin and consent to the disseisin, and not the wife, then such lease made to the wife is a remitter, for that no default was in the wife.

§ 679. Also, if such discontinuee make an estate of freehold to the husband and wife by deed indented upon condition, *scil.* reserving to the discontinuee a certain rent, and for default of payment a re-entry, and for that the rent is behind the discontinuee enter; then for this entry the wife shall have an assise of *novel disseisin* after the death of her husband, against the discontinuee, because the condition was altogether taken away, inasmuch as the wife was in her remitter; yet the husband with his wife cannot have an assise, because the husband is estopped, &c.

§ 680. Also, if the husband discontinue the tenements of his wife, and take back an estate to him for life, the remainder after his decease to his wife for term of her life; in this case this is no remitter to the wife

during the life of the husband, for that during the life of the husband, the wife hath nothing in the freehold. But if in this case the wife surviveth the husband, this is a remitter to the wife, because a freehold in law is cast upon her against her will. And inasmuch as she cannot have an action against any other person, and against herself she cannot have any action, therefore she is in her remitter. For in this case, although the wife doth not enter into the tenements, yet a stranger which hath cause to have an action, may sue his action against the wife for the same tenements, because she is tenant in law, albeit that she be not tenant in deed.

§ 681. For tenant of freehold in deed is he who if he be disseised of the freehold may have an assise: but tenant [of freehold] in law before his entry [in deed,] shall not have an assise. And if a man [be] seised¹ of certain land, [and] hath issue a son who taketh wife, and the father dieth seised, and after the son dies before any entry made by him into the land, the wife of the son shall be endowed in the land, and yet he had no freehold in deed, but he had a fee and freehold in law. And so note, that a *præcipe quòd reddat* may as well be maintained against him that hath the freehold in law, as against him that hath the freehold in deed.

§ 682. Also, if tenant in tail hath issue two sons of full age, and he letteth the land tailed to the eldest son for term of his life, the remainder to the younger son for term of his life, and after the tenant in tail dieth;

¹ { in fee }

in this case the eldest son is not in his remitter, because he took an estate of his father. But if the eldest die without issue of his body, then this is a remitter to the younger brother, because he is heir in tail, and a freehold in law is fallen to,¹ and cast upon him by force of the remainder, and there is none against whom he may sue his action.²

§ 683. In the same manner it is where a man is disseised, and the disseisor dieth seised, and the tenements descend to his heir, and the heir of the disseisor make a lease to a man of the same tenements for term of³ life, the remainder to the disseisee for term of life, or in tail, or in fee,⁴ the tenant for life dieth, now this is a remitter to the disseisee, &c., *causâ quâ suprâ*, [*&c.*]

§ 684. Note,⁵ if tenant in tail enfeof his son and another by his deed of the land entailed, in fee, and livery of seisin is made to the other according to the deed, and the son not knowing of this agreeth not to the the feoffment, and after he which took the livery of seisin dieth, and the son doth not occupy the land, nor taketh any profit of the land during the life of the

¹ Instead of "fallen to," the translation in Co. Lit. has "eschewed"; but Ritso's Science of the Law, 114, points out that the proper reading is "eschewed," or "fallen to." The earliest texts support the amendment: and Hargrave and Butler's notes, citing Ritso, say that "here the word 'eschewed' is used in a general sense, and signifies 'fallen to.'"

² { &c. }

³ { his }

⁴ { and }

⁵ Instead of "Note," the best French texts authorize "Also."

father, and after the father dieth, now this is a remitter to the son, because the freehold is cast upon him by the survivor; and no default was in him, because he did never agree, &c., in the life of his father, and he hath none against whom he may sue a writ of *formedon*, &c.

§ 685. For if a man be disseised of certain land, and the disseisor make a deed of feoffment whereby he enfeoffeth B. C. and D. and livery of seisin is made to B. and C. but D. was not at the livery of seisin, nor ever agreed to the feoffment, nor ever would take the profits, &c. and after B. and C. die, and D. survive them, and the disseisee bringeth his writ upon disseisin in the *per* against D. he¹ shall shew all the matter,² how he never agreed to the feoffment, and he shall discharge himself of damages, so as the demandant shall recover no damages against him, although he be tenant of the freehold of the land. And yet the statute of Gloucester, [cap. 1,] will that the disseisee shall recover damages in a writ of entry founded upon a³ disseisin against him which is found tenant. And this is a proof in the other case that for as much as the issue in tail came to the freehold, and⁴ not by his act, nor by his agreement, but⁵ after the death of his father, therefore this is a remitter to him, inasmuch as he cannot sue an action of *formedon* against any other person, &c.

¹ Instead of "he," the best French texts authorize "this same D."

² { and } ³ { novel } ⁴ { this }

⁵ Instead of "but," the best French texts authorize "that."

§ 686. Also if an abbot alien the land of his house to another in fee, and the alienee by his deed charge the land with a rent-charge in fee, and after the alienee enfeoff the abbot with license, to have and to hold to the abbot and to his successors for ever, and after the abbot die, and another is chosen and made abbot: in this case the abbot that is the successor, and his convent, are in their remitter, and shall hold the land discharged, because the same abbot cannot have an action, nor a writ of *entre sine assensu capituli*, of the same land against any other person.

§ 687. In the same manner it is where a bishop, or a dean, or other such persons alien, &c. without assent, &c. and the alienee charge the land, &c. and after the bishop takes back an estate of the same land by license, to him and his successors, and after the bishop dieth; his successor is in his remitter as in right of his church, and shall defeat the charge, &c., *causâ quâ supra*.

§ 688. Also if a man sue a false action against tenant in tail, as if one will sue against him a writ of entry in the *post*, supposing by his writ that the tenant in tail had not his entry but by A. of B. who disseised the grandfather of the demandant, and this is false, and he recovereth against the tenant in tail by default, and sueth execution, and after the tenant in tail dieth, his issue may have a writ of *formedon* against him which recovereth; and if he will plead the recovery against the tenant in tail, the issue may say, that the said A. of B.

did not disseise the grandfather of him which recovered, in manner as his writ suppose, and so he shall falsify his recovery. And admit this were true that the said A. of B. did disseise the grandfather of the demandant which recovered, and that after the disseisin, the demandant, or his father, or his grandfather, by a deed had released to the tenant in tail all the right which he had in the land, &c., and notwithstanding this he sueth a writ of entry in the *post* against the tenant in tail, in manner as is aforesaid, and the tenant in tail plead to him, that the said A. of B. did not disseise his grandfather, in such manner as his writ suppose; and upon this they are at issue, and the issue is found for the demandant, whereby he hath judgment to recover, and sueth execution; and after the tenant in tail dieth, his issue may have a writ of *formedon* against him that recovered; and if he will plead the recovery by the action tried against his father [who was] tenant in tail, then he may shew and plead the release made to his father, and so the action which was sued, faint in law.¹

§ 689. And it seemeth, that a faint action is as much to say in English a *feigned action*, that is to say, such an action as albeit the words of the writ be true, yet for certain causes he hath no cause nor title by the law to recover by the same action. And a false action is where the words of the writ be false. And in these two cases aforesaid, if the case were such that after such recovery, and execution thereupon done, the tenant in

¹ { &c. }

tail had disseised him that recovered, and thereof died seised, whereby the land descended to his issue, this is a remitter to the issue, and the issue is in by force of the tail; and for this cause I have put these two cases precedent, to inform thee (my son) that the issue in tail and execution made against his ancestor, may be as well by force of a descent made unto him after a recovery in his remitter, as he should be by the descent made to him after a discontinuance made by his ancestor of the entailed lands by feoffment in the country, or otherwise, &c.

§ 690. Also in the cases aforesaid, if the case were such, that after the demandant have judgment to recover against the tenant in tail, and the same tenant in tail dieth before any execution had against him, whereby the tenements descend to his issue, and he who recovereth sueth a *scire facias* out of the judgment to have execution of the judgment against the issue in tail, the issue shall plead the matter as aforesaid; and so prove that the said recovery was false or faint in law, and so shall bar him to have execution of the judgment.¹

§ 691. Also if tenant in tail discontinue the tail, and dieth, and his issue bringeth his writ of *formedon* against the discontinuee (being tenant of the freehold of the land), and the discontinuee plead that he is not tenant, but utterly disclaimeth from the tenancy in the land; in this case the judgment shall be, that the ten-

¹ { &c. }

ant goeth without day, and after such judgment the issue in the tail that is demandant may enter into the land, notwithstanding the discontinuance, and by such entry he shall be adjudged in his remitter. And the reason is, for that if any man sue a *præcipe quòd reddat* against any tenant of the freehold, in which action the demandant shall not recover damages, and the tenant pleads non-tenure, or otherwise disclaim in the tenancy, the demandant cannot aver his writ, [and say] that he is tenant as the writ supposeth. And for this cause the demandant, after that, that judgment is given that the tenant shall go without day, may enter into the tenements demanded, the which shall be as great an advantage to him in the law, as if he had judgment to recover against the tenant, and by such entry he is in his remitter by force of the entail. But where the demandant shall recover damages against the tenant, there the demandant may aver, that he is tenant as the writ supposeth, and that for the advantage of the demandant to recover his damages, or otherwise he shall not recover¹ his damages, which are or were given to him by the law.

§ 692. Also if a man be disseised, and the disseisor die, his heir being in by descent, now the entry of the disseisee is taken away; and if the disseisee bring his writ of entry *sur disseisin* in the *per* against the heir, and the heir disclaim in the tenancy, &c., the demandant may aver his writ that he is tenant as the writ sup-

¹ Instead of "recover," some of the best French texts authorize "receive."

pose, if he will, to recover his damages: but yet if he will relinquish the averment, &c., he may lawfully enter into the land because of the disclaimer, notwithstanding that his entry before was taken away. And this was adjudged before my master Sir R. Danby, late Chief Justice of the Common Pleas and his companions, &c.

§ 693. Also where the entry of a man is congeable, although that he takes an estate to him when he is of full age for term of life, or in tail, or in fee, this is a remitter to him, if such taking of the estate be not by deed indented, or by matter of record, which shall conclude or estop him. For if a man be disseised, and takes back an estate from the disseisor without deed, or by deed poll, this is a¹ remitter to the disseisee. [&c.]

§ 694. Also if a man let land for term of life to another, who alieneth to another in fee, and the alienee makes an estate to the lessor, this is a remitter to the lessor, because his entry was congeable,² [&c.]

§ 695. Also if a man be disseised, and the disseisor let the land to the disseisee by deed poll, or without deed for term of years, by which the disseisee entereth, this entry is a remitter to the disseisee. For in such case where the entry of a man is congeable, and a lease is made to him, albeit that he claimeth by words *in pais*, that he hath estate by force of such lease, or saith openly, that he claimeth nothing in the land but by force of such lease, yet this is a remitter to him, for that such

{ good }

² *I.e.* lawful.

disclaimer¹ *in pais* is nothing to the purpose. But if he disclaim² in court of record, that he hath no estate but by force of such lease, and not otherwise, then is he concluded, &c.

§ 696. Also if two joint-tenants seised of certain tenements in fee, the one being of full age, the other within age be disseised, [&c.,] and the disseisor die seised, and his issue enter, the one of the joint-tenants being then within age, and after that he cometh to full age, the heir of the disseisor letteth the tenements to the same joint-tenants for term of their [two]lives, this is a remitter (as to the moiety) to him that was within age, because he is seised of the moiety which belongeth to him in fee, for that his entry was congeable. But the other joint-tenant hath in the other moiety but an estate for term of his life by force of the lease, because his entry was taken away, &c.

¹ Instead of "disclaimer," the best French texts authorize "claim."

² Instead of "disclaim," the best French texts authorize "claim."

CHAPTER XIII.

WARRANTY.

§ 697. It is commonly said, that there be three warranties, *scil.* warranty lineal, warranty, collateral, and warranty that commences by disseisin. And it is to be understood, that before the statute of Gloucester all warranties which descended to¹ them which are heirs to those who made the warranties, were bars to the same heirs to demand any lands or tenements against the warranties, except the warranties which commence by disseisin; for such warranty was no bar to the heir, for that the warranty commenced by wrong, viz. by disseisin.

§ 698. Warranty that commences by disseisin is in this manner: as where there is father and son, and the son purchaseth land, &c. and letteth the same land to his father for term of years, and the father by his deed thereof enfeoffeth another in fee, and binds him and his heirs to warranty, and the father dies, whereby the warranty descendeth to the son, this warranty shall not bar the son; for notwithstanding this warranty the son may well enter into the land, or have an assise

¹ *I.e.* upon. See section 601, n. 2.

against the alienee if he will, because the warranty commenced by disseisin; for when the father, which had but an estate for term of years, made a feoffment in fee, this was a disseisin to the son of the freehold which then was in the son. In the same manner it is, if the son letteth to the father the land to hold at will, and after the father make a feoffment with warranty, &c. And as it said of the father, so it may be said of every other ancestor, &c. In the same manner is it, of tenant by *elegit*, tenant by statute merchant, or tenant by statute staple, make a feoffment in fee with warranty,¹ this shall not bar the heir which ought to have the land, because such warranties commence by disseisin.

§ 699. Also if a guardian in chivalry, or guardian in socage, make a feoffment in fee, or in fee tail, or for life, with warranty, &c., such warranties are not bars to the heirs to whom the lands shall be descended, because they commence by disseisin.

§ 700. Also, if father and son purchase certain lands, or tenements, to have and to hold to them jointly, &c., and after² the father alien the whole to another, and bind him and his heirs to warranty, &c., and after³ the father dieth, this warranty shall not bar the son of the moiety that belongs to him of the said lands or tenements, because as to that moiety which belongs to the son, the warranty commences by disseisin, &c.

¹ { &c. } ² *I.e.* afterwards.

³ *I.e.* afterwards.

§ 701. Also if A. of B. be seised of a mese, and F. of G. that no right hath to enter into the same mese, claiming the said mese, to hold to him and to his heirs, entereth into the said mese, but the same A. of B. is then continually abiding in the same mese; in this case the possession of the freehold shall be always adjudged in A. of B. and not in F. of G. because in such case where two be in one house, or other tenements, and the one claimeth by one title, and the other by another title, the law shall adjudge him in possession, that hath right to have the possession of the same tenements. But if in the case aforesaid, the said F. of G. make a feoffment to certain barrators and extortioners in the country, to have maintenance from them of the said house, by a deed of feoffment with warranty, by force whereof the said A. of B. dare not abide in the house, but goeth out of the same,¹ this warranty commenceth by disseisin, because such feoffment was the cause that the said A. of B. relinquished the possession of the same house.²

§ 702. Also, if a man which hath no right to enter into other tenements, enter into the same tenements, and incontinently make a feoffment thereof to others by his deed with warranty, and deliver to them seisin, this warranty commences by disseisin, because the disseisin and feoffment were made as it were at one time. And that this is law, you may see in a plea M. 31 E. III.,³ in a writ of *formedon* in the reverter.

¹ { house } ² { &c. }

³ Instead of 31 E. III., Co. Lit. has, both in the French and

§ 703. Warranty lineal is where a man seised of lands in fee, maketh a feoffment by his deed to another, and binds himself and his heirs to warranty, and hath issue and die, and the warranty descends to¹ his issue, that is a lineal warranty. And the cause why this is called lineal warranty, is not because the warranty descendeth from the father to his heir; but the cause is, for that if no such deed with warranty had been made by the father, then the right of the tenements should descend to the heir, and the heir should convey the descent from his father, &c.

§ 704. For if there be father and son, and the son purchase lands² in fee, and the father of this disseiseth his son, and alieneth to another in fee by his deed, and by the same deed bind him and his heirs to warrant the same tenements, &c., and the father dieth; now is the son barred to have the said tenements: for he cannot by any suit, nor by other mean of law, have the same lands by cause of the said warranty. And this is a collateral warranty; and yet the warranty descendeth lineally from the father to the son.

§ 705. But because if no such deed with warranty had been made, the son in no manner could convey the title which he hath to the tenements from his father unto him, inasmuch as his father had no estate in right

in the translation "11 E. III."; but Coke says: "This is mistaken, and should be 31 E. III., and so is the original."

¹ *I.e.* upon. See section 602, n. 2.

² Instead of "lands," the best French texts authorize "tenements."

in the lands. Therefore such warranty is called collateral warranty. *Assumed* is it that *implied* the warranty is collateral to the title of the tenements. And this is as much as to say, as he to whom the warranty is essential could not convey to him the title which he had in the tenements by him that made the warranty, in case that no such warranty were made.

§ 704. Also, if there be grandfather, father, and son, and the grandfather is disseised, in whose possession the father seizes by his deed with warranty, son, and dies, and after the grandfather dieth, now the son is barred to have the tenements by the warranty of the father. And this is called a lineal warranty, because if no such warranty were, the son could not convey the right of the tenements to him, nor show how he is heir to the grandfather but by means of the father.¹

§ 705. Also, if a man hath issue two sons and is disseised, and the eldest son release to the disseisor by his deed with warranty, &c., and dies without issue, and afterwards the father dieth, this is a lineal warranty to the younger son, because albeit the eldest son died in the life of the father, yet by possibility it might have been, that he might convey to him the title of the land by his elder brother, if no such warranty had been. For it might be, that after the death of the father the elder

¹ Tomlins suggests that the meaning is clearer if the concluding passage be read thus: "The son could convey the right of the tenements to him, or show how he is heir to the grandfather by means of the father."

brother entered into the tenements and died without issue, and then the younger son shall convey to him the title by the elder [son]. But in this case if the younger son releaseth with warranty to the disseisor, and dieth without issue, this is a collateral warranty to the elder [son,] because that of such land as was the father's, the elder by no possibility can convey to him the title by means of the younger son.

§ 708. Also, if tenant in tail hath issue three sons, and discontinue the tail in fee, and the middle son release by his deed to the discontinuee, and bind him and his heirs to warranty, &c., and after the tenant in tail dieth, and the middle son dieth without issue, now the eldest son is barred to have any recovery by writ of *formedon*, because the warranty of the middle brother is collateral to him, inasmuch as he can by no means convey to him by force of the tail any descent by the middle, and therefore this is a collateral warranty. But in this case, if the eldest son die without issue, now the youngest brother may well have a writ of *formedon* in the descender, and shall recover the same land, because the warranty of the middle is lineal to the youngest son, for that it might be that by possibility the middle might be seised by force of the tail after the death of his oldest brother, and then the youngest brother might convey his title of descent by the middle brother.

§ 709. Also, if tenant in tail discontinue the tail, and hath issue and dieth, and the uncle of the issue release to the discontinuee with warranty, &c., and dieth

without issue, this is a collateral warranty to the issue in tail, because the warranty descendeth upon the issue, that cannot convey himself to the estate by means of his issue.

§ 710. Also, if the tenant in tail have issue two daughters and dieth, and the elder entereth into the whole, and thereof maketh a feoffment in fee with warranty, &c., and after the elder daughter dieth without issue: in this case the younger daughter is barred as to the one moiety, and as to the other moiety she is not barred. For as to the moiety which belongeth to the younger daughter, she is barred, because as to this part¹ she cannot convey the descent by means of her elder sister, and therefore as to this moiety, this is a collateral warranty. But as to the other moiety, which belongeth to her elder sister, the warranty is no bar to the younger sister, because she may convey her descent as to that moiety which belongeth to her elder sister by the same elder sister, so as to this moiety which belongeth to the elder sister, the warranty is lineal to the younger sister.

§ 711. And note, that as to him that demandeth the fee simple by any of his ancestors, he shall be barred by warranty lineal which descendeth upon him, unless he be restrained by some statute.

§ 712. But he that demandeth fee tail by writ of *formedon in discender*, shall not be barred by lineal war-

¹ Instead of "this part," the best French texts authorize "the moiety which belongeth to her."

ranty, unless he hath assets by descent in fee simple by the same ancestor that made the warranty. But collateral warranty is a bar to him that demandeth fee, and also to him that demandeth fee tail without any other descent of fee simple, except in cases which are restrained by the statutes, and in other cases for certain causes, as shall be said hereafter.

§ 713. Also, if land be given to a man, and to the heir of his body begotten, who taketh wife, and have issue a son between them, and the husband discontinues the tail in fee and dieth, and after the wife releaseth to the discontinuee in fee with warranty, &c., and dieth, and the warranty descends to the son, this is a collateral warranty.

§ 714. But if lands be given to the husband and wife, and to the heirs of their two bodies begotten, who have issue a son, and the husband discontinue the tail and dieth, and after the wife release with warranty and dieth, this warranty is but a lineal warranty to the son; for the son shall not be barred in this case to sue his writ of *formedon*, unless that he hath assets by descent in fee simple by his mother, because their issue in the writ of *formedon* ought to convey to him the right as heir to his father and mother of their two bodies begotten *per formam doni*; and so in this case the warranty of the father and the warranty of the mother are but lineal warranty to the heir, &c.

§ 715. And note, that in every case where a man demandeth lands in fee tail by writ of *formedon*, if any

of the issue is tall that hath possession, or that hath not possession, make a warranty, &c. if he which hath the writ of formation might by any possibility, by matter which might be in fact, convey to him by him that made the warranty *per formam* &c. this is a lineal warranty, and not collateral.

§ 716. Also if a man hath issue three sons, and give land to the eldest son, to have and to hold to him and to the heirs of his body begotten, and for default of such issue, the remainder to the middle son, to him and to the heirs of his body begotten, and for default of such issue of the middle son, the remainder to the youngest son, and to the heirs of his body begotten: in this case, if the eldest¹ discontinue the tail in fee, and bind him and his heirs to warranty, and dieth without issue, this is a collateral warranty to the middle son, and shall be a bar to demand the same land by force of the remainder; for that the remainder is his title, and his elder brother is collateral to this title, which commenceth by force of the remainder. In the same manner it is, if the middle son hath the same land by force of the remainder, because his eldest brother made no discontinuance, but died without issue of his body, and after the middle make a discontinuance with warranty, &c., and dieth without issue, this is a collateral warranty to the youngest son.—And also in this case, if any of the

¹ { &c. }

² { son }

said sons be disseised, and the father that made the gift, &c., releaseth to the disseisor all his right¹ with warranty,² this is a collateral warranty to that son upon whom the warranty descendeth, *causâ quâ suprà*.

§ 717. And so note, that where a man that is collateral to the title, and releaseth this with warranty, &c., this is a collateral warranty.

§ 718. Also if a father giveth land to his eldest son, to have and to hold to him and to the heirs male of his body begotten, the remainder to the second son, &c., if the eldest son alieneth in fee with warranty, &c., and hath issue female, and dieth without issue male, this is no collateral warranty to the second son, for he shall not be barred of³ his action of *formedon* in the remainder, because the warranty descended to⁴ the daughter of the elder son, and not to⁵ the second son; for every warranty which descends, descendeth to⁶ him that is heir to him who made the warranty by the common law.

§ 719. Note, if land be given to a man, and to the heirs male of his body begotten, and for default of such issue, the remainder thereof to his heirs female of his body begotten, and after the donee in tail maketh a feoffment in fee with warranty accordingly, and hath

¹ { &c. }

² { &c. }

³ Instead of "for he shall not be barred of," the best French texts authorize "nor shall it hurt him in respect to."

⁴ *I.e.* upon. See section 601, n. 2.

⁵ *I.e.* upon.

⁶ *I.e.* upon.

issue a son and a daughter, and dieth, this warranty is but a lineal warranty to the son to demand by a writ of *formedon* in the *discender*; and also it is but lineal to the daughter, to demand the same land by writ of *formedon* in the remainder, if her¹ brother dieth without issue male, because she claimeth as heir female of the body of her father engendered. But in this case, if her brother in his life release to the discontinnee, &c. with warranty, &c., and after dieth without issue, this is a collateral warranty to the daughter, because she cannot convey to her the right which she hath by force of the remainder by any means of descent by her brother, for that² the brother is collateral to the title of his sister, and therefore his warranty is collateral, &c.

§ 720. Also I have heard say, that in the time of King Richard the Second, there was a justice of the Common Pleas, dwelling in Kent, called Richel, who had issue divers sons, and his intent was, that his eldest son should have certain lands and tenements to him and to the heirs of his body begotten; and for default of issue, the remainder to the second son, &c., and so to the third son, &c., and because he would that none of

¹ Instead of "if her," the translation in Co. Lit. has "unless the." Ritso's Science of the Law, 114, says that "we should read 'if the brother dieth,' &c. ; for it is only in the event of the brother's dying without issue male, that the heir female can have any claim at all." The amendment is authorized by the best French texts; and there is textual criticism to the same effect in Vaughan, 368-369.

² Instead of "for that," the best French texts authorize "and therefore."

his sons should alien, or make warranty to bar or hurt the others that should be in ther emainder, &c., he cause-eth an indenture to be made to this effect, viz. that the lands and tenements were given to his eldest son upon such condition, that if the eldest son alien in fee, or in fee tail, &c., or if any of his sons alien, &c., that then their estate should cease and be void, and that then the same lands and tenements immediately should remain to the second son, and to the heirs of his body begotten,¹ *et sic ultra*, the remainder to his other sons, and livery of seisin was made accordingly.

§ 721. But it seemeth by reason that all such remainders in the form aforesaid are void and of no value, and that for three causes. One cause is, for that every remainder which beginneth by a deed it behoveth that the remainder be in him to whom the remainder is entailed by force of the same deed, before the livery of seisin is made to him which shall have the freehold; for in such case the growing and the being of the remainder is by the livery of seisin to him that shall have the freehold, and such remainder was not to the second son at the time of the livery of seisin in the case aforesaid, &c.

§ 722. The second cause is, if the first son alien the tenements in fee, then is the freehold and the fee

¹ { &c., upon the same condition, *scilicet*, that if the second son alien, &c., that then his estate should cease, and that then the same lands and tenements immediately should remain to the third son and the heirs of his body begotten. }

simple in the alienee, and in none other; and if the donor had any reversion, by such alienation the reversion is discontinued: then how by any reason may it be, that such remainder shall commence his being and his growing immediately after such alienation made to a stranger, that hath by the same alienation a freehold and fee simple, &c.? And also if such remainder should be good, then might he enter upon the alienee, where he had no manner of right before the alienation, which should be inconvenient.

§ 723. The third cause is, when the condition is such, that if the elder son alien, &c., that his estate shall cease or be void, &c., then after such alienation, &c., may the donor enter by force of such condition,¹ as it seemeth; and so the donor or his heirs in such case ought sooner to have the land than the second son, that had not any right before such alienation; and so it seemeth that such remainders in the case aforesaid are void.²

§ 724. Also at the common law, before the statute of Gloucester,³ if tenant by the curtesy had aliened in fee with warranty,⁴ after his decease this was a bar to the heir,⁵ as it appeareth by the words of the same statute; but it is remedied by the same statute, that the warranty of tenant by the curtesy shall be no bar to the

¹ { &c. }

² { &c. }

³ 6 E. I. (1278.)

⁴ { accordingly }

⁵ { &c. }

heir, unless that he hath assets by descent by the tenant by the curtesy; for before the said statute, this was a collateral warranty to the heir, for that he could not convey any title of descent to the tenements by the tenant by the curtesy, but only by his mother, or other of his ancestors,¹ and this is the cause why it was a collateral warranty.

§ 725. But if a man inheritor taketh wife, who have issue a son between them, and the father dieth, and the son entereth into the land, and endow his mother, and after the mother alieneth that which she hath in dower, to another in fee with warranty accordant, and after dieth, and the warranty descendeth to the son, now the son shall be barred to demand the same land by cause of the said warranty; because that such collateral warranty of tenant in dower is not remedied by any statute. The same law is it, where tenant for life maketh an alienation with warranty, &c., and dieth, and the warranty descendeth to him which hath the reversion or the remainder,² they shall be barred by such warranty.³

§ 726. Also, in the case aforesaid, if it were so that when the tenant in dower aliened, &c., his heir was within age, and also at the time that the warranty descended upon him he was within age; in this case the heir may after enter upon the alienee, notwithstanding the warranty descended, &c., because no laches shall

¹ { &c. }

² { &c. }

³ { &c. }

be adjudged in the heir within age that he did not enter upon the alienee in the life of tenant in dower. But if the heir were within age at the time of the alienation, &c., and after he cometh to full age in the life of tenant in dower, and so being of full age he doth not enter upon the alienee in the life of tenant in dower, and after the tenant in dower dieth, &c., there peradventure the heir shall be barred by such warranty, because it shall be accounted his folly, that he being of full age did not enter in the life of tenant in dower, &c.

§ 727. [But now by the statute made 11 H. VII., cap. 10., it is ordained, if any woman discontinue, alien, release, or confirm with warranty, any lands or tenements which she holdeth in dower for term of life, or in tail of the gift of her first husband, or of his ancestors, or the gift of any other seised to the use of the first husband, or of his ancestors, that all such warranties, &c. shall be void; and that it shall be lawful for him which hath these lands or tenements, after the death of the same woman to enter.]¹

§ 728. Also, it is spoken in the end of the said statute of Gloucester, which speaketh of the alienation with warranty made by the tenant by the curtesy in this form. Also, in the same manner, the heir of the woman after the death of the father and mother shall not be barred of action, if he demandeth the heritage or the marriage of his mother by writ of entry, that his father aliened in his mother's time, whereof no fine is levied in

¹ Coke says: "This is an addition to Littleton."

the king's court: and so by force of the same statute, if the husband of the wife alien the heritage or marriage of his wife in fee with warranty, &c., by his deed in the country, it is clear law that this warranty shall not bar the heir, unless he hath assets by descent.¹

§ 729. But the doubt is, if the husband alien the heritage of his wife by fine levied in the king's court with warranty, &c., if this shall bar the heir without any descent in value.² And as to this, I will here tell certain reasons, which I have heard said in this matter, I have heard my master Sir Richard Newton, late Chief Justice of the Common Pleas, once say in the same court, that such warranty as the husband maketh by fine levied in the king's court shall bar the heir, albeit he hath nothing by descent, because the statute saith (whereof no fine is levied in the king's court³); and so by his opinion this warranty by fine⁴ remaineth yet a collateral warranty, as it was at the common law, not remedied by the said statute, because the said statute excepteth alienations by fine with warranty.

§ 730. And some others have said, and yet do say the contrary, and this is their proof, that as by the same chapter of the said statute it is ordained, that the warranty of the tenant by the curtesy shall be no bar to the heir, unless that he hath assets by descent, &c., although

¹ { &c. }

² { &c. }

³ { &c. }

⁴ { &c. }

that the tenant by the curtesy levy a fine of the same tenements with warranty, &c., as strongly as he can, yet this warranty shall not bar the heir, unless that he hath assets by descent, &c. And I believe that this is law; and therefore they say, that it should be inconvenient to intend the statute in such manner as a man that hath nothing but in right of his wife might by fine levied by him of the same tenements which he hath but in right of his wife, with warranty, &c., bar the heir of the same tenements without any descent of fee simple, &c., where the tenant by the curtesy cannot do this.

§ 731. But they have said, that the statute shall be intended after this manner, *scil.* where the statute saith, whereof no fine is levied in the king's court, that is to say, whereof no lawful fine is rightfully levied in the king's court: and that is, whereof no fine of the husband and his wife is levied in the king's court, for at the time of the making of the said statute, every estate of lands or tenements that any man or woman had, which should descend to his heir, was fee simple without condition, or upon certain conditions in deed or in law. And because that then such fine might rightfully be levied by the husband and his wife, and the heirs of the husband should warrant, &c., such warranty shall bar the heir,¹ and so they say that this is the meaning of the statute, for if the husband and his wife should make a feoffment in fee by deed in the country, his heir after the decease of the husband and wife shall have a writ of entry *sur*

¹ { &c. }

cui in vitâ, &c., notwithstanding the warranty of the husband, then if no such exception were made in the statute of the fine levied, &c., then the heir should have the writ of entry, &c., notwithstanding the fine levied by the husband and his wife, because the words of the statute before the exception of the fine levied, &c., are general, viz., that the heir of the wife after the death of the father and mother is not barred of action, if he demand the heritage or the marriage of his mother by writ of entry, that his father aliened in the time of his mother, and so albeit the husband and wife aliened by fine, yet this is true, that the husband aliened in the time of the mother, and so it should be in that case of the statute, unless that such words were, viz., whereof no fine is levied in the king's court; and so they say, that this is to be understood, whereof no fine by the husband and his wife is levied in the king's court, the which is lawfully levied in such case; for if the justices have knowledge, that a man that hath nothing but in the right of his wife, will levy a fine in his name only, they will not, neither ought they to take such fine to be levied by the husband alone without¹ his wife, &c. *Ideo quære* of this matter, &c.

§ 732. Also, it is to be understood, that in these words, where the heir demands the heritage, or the marriage of his mother, this word (or) is a disjunctive, and is as much as to say, if the heir demand the heritage of his mother, viz. the tenements that his mother had in

¹ { naming }

fee simple by descent or by purchase, or if the heir demand the marriage of his mother, that is to say, the tenements that were given to his mother in frankmarriage.

§ 733. Also, where¹ it is contained in divers deeds these words in Latin, *Ego et hæredes mei*² *warrantizabimus et imperpetuum defendemus*; it is to be seen what effect this word, *defendemus*, hath in such deeds; and it seemeth that it hath not the effect of warranty, nor comprehendeth in it the cause of warranty; for if it should be so, that it took the effect or cause of warranty, then it should be put into some fines levied in the king's court; and a man never saw that this word, *defendemus*, was in any fine, but only this word, *warrantizabimus*; by which it seemeth, that this word [and verb], *warrantizo*,³ maketh the warranty, and is the cause of warranty, and no other word in our law.

§ 734. Also, if tenant in tail be seised of lands⁴ devisable by testament after the custom, &c., and the tenant in the tail alieneth the [same] tenements to his brother in fee, and hath issue, and dieth, and after his brother deviseth by his testament the same tenements to another in fee, and bindeth him and his heirs to warranty, &c., and dieth without issue; it seemeth that this warranty shall not bar the issue in the tail, if he will sue his writ of *formedon*, because that this warranty

¹ *I.e.* whereas.

² { &c. }

³ { as, &c. }

⁴ Instead of "lands," the best French texts authorize "tenements."

shall not descend to the issue in tail, in so much as the uncle of the issue was not bound to the same warranty in his lifetime: neither could he warrant the tenements in his life, in so much as the devise could not take any execution or effect until after his decease. And in so much as the uncle in his life was not held to warranty, such warranty may not descend from him to the issue in the tail, &c., for nothing can descend from the ancestor to his heir, unless the same were in the ancestor.

§ 735. Also a warranty cannot go according to the nature of the tenements by the custom, &c., but only according to the form of the common law. For if the tenant in tail be seised of tenements in borough English, where the custom is that all the tenements within the same borough ought to descend to the youngest son, and he discontinueth the tail with warranty, &c., and hath issue two sons, and dieth seised of other lands or tenements in the same borough in fee simple to the value or more of the lands entailed, &c., yet the youngest son shall have a writ of *formedon* of the lands tailed, and shall not be barred by the warranty of his father, albeit assets descended to him in fee simple from his said father according to the custom, &c., because the warranty descendeth upon his elder brother who is in full life,¹ and not upon the youngest. [And] in the same manner is it of collateral warranty made of such tenements, where the warranty descendeth upon the eldest son, &c., this shall not bar the younger son, &c.

¹ { &c. }

§ 736. In the same manner is it of lands in the county of Kent, that are called gavelkind, which lands are dividable between the brothers, &c., according to the custom;¹ if any such warranty be made by his ancestor, such warranty shall descend only to² the heir which is heir at the common law, [that is to say, to the elder brother, according to the consueance of the common law,] and not to all the heirs that are heirs of such tenements according to the custom.³

§ 737. Also, if tenant in tail hath issue two daughters by divers venters, and dieth, and the daughters enter, and a stranger disseiseth them of the same tenements, and one of them⁴ releaseth by her deed to the disseisor all her right, and bind her and her heirs to warranty, and die without issue: in this case the sister which surviveth may well enter, and oust the disseisor of all the tenements, because such warranty is no discontinuance nor collateral warranty to the sister that surviveth, for that they are of half blood, and the one cannot be heir to the other, according to the course of the common law. But otherwise it is, where there be daughters of tenant in tail by one venter.

§ 738. Also, if tenant in tail letteth the lands to a man for term of life, the remainder to another in fee, and a collateral ancestor confirmeth the state of the ten-

¹ { &c. }

² *I.e.* upon. See section 601, n. 2.

³ { &c. }

⁴ Instead of "them," the best French texts authorize "the daughters."

ant for life, and bindeth him and his heirs to warranty for term of the life of the tenant for life, and dieth, and the tenant in tail hath issue and dies; now the issue is barred to demand the tenements by writ of *formedon* during the life of tenant for life, because of the collateral warranty descended upon the issue in tail. But after the decease of the tenant for life, the issue shall have a [writ of] *formedon*, &c.

§ 739. And upon this I have heard reason, that this case will prove another case, viz. if a man letteth his lands to another, to have and to hold to him and to his heirs for term of another's life, and the lessee dieth living *celuy a que vie*, &c., and a stranger entereth into the land, that the heir of the lessee may put him out, [&c.,] because in the case next aforesaid, inasmuch as a man may bind him and his heirs to warranty to tenant for life only, during the life of the tenant for life, and this warranty descendeth to¹ the heir of him which made the warranty, the which warranty is no warranty of inheritance, but only for term of another's life: by the same reason where lands are let to a man, to have and to hold to him and his heirs for term of another's life, if the lessee die living *celuy a que vie*, &c. For they have said, that if a man grant an annuity to another, to have and to take to him and his heirs for term of another's life if the grantee die, &c., that after his death² his heir

¹ *I.e.* upon. See section 601, n. 2. •

² Instead of "after his death," the best French texts authorize "afterwards."

shall have the annuity during the life of *celuy a que vie*, &c. *Quære de istâ materiâ.*

§ 740. But where such lease or grant is made to a man and to his heirs for term of years, in this case the heir of the lessee or the grantee shall not after the death of the lessee or the grantee have that which is so let or granted, because it is a chattel real and chattels reals by the common law shall come to the executors of the grantee, or of the lessee, and not to the heir.¹

§ 741. Also, in some cases it may be, that albeit a collateral warranty be made in fee, &c., yet such a warranty may be defeated and taken away. As if tenant in tail discontinue the tail in fee, and the discontinuee is disseised, and the brother of the tenant in tail releaseth by his deed to the disseisor all his right, &c., with warranty in fee, and dieth without issue, and the tenant in tail hath issue and die; now the issue is barred of his action by force of the collateral warranty descended upon him. But if afterwards the discontinuee entereth upon the disseisor, then may the heir in tail have well his action of *formedon*, &c., because the warranty is taken away and defeated, for when a warranty is made to a man upon an estate which he then had, if the estate be defeated, the warranty is defeated.

§ 742. In the same manner it is, if the discontinuee make a feoffment in fee, reserving to him a certain rent, and for default of payment a re-entry, &c., and a col-

¹ { &c. }

lateral warranty of the ancestor is made¹ to the feoffee that hath the estate upon condition, &c., and² dieth without issue, albeit that this warranty shall descend upon the issue in tail; yet if after the rent be behind, and the discontinuee enter into the land,³ then shall the issue in tail have his recovery by writ of *formedon*, because the collateral warranty is defeated. And so if any such collateral warranty be pleaded against the issue in tail, in his action of *formedon*, he may shew the matter as is aforesaid, how the warranty is defeated, &c., and so he may well maintain his action, &c.

§ 743. Also, if tenant in tail make a feoffment to his uncle, and after the uncle make a feoffment in fee with warranty, &c., to another, and after the feoffee of the uncle doth re-enfeoff again the uncle in fee, and after the uncle enfeoffeth a stranger in fee without warranty, and dieth without issue, and the tenant in tail dieth, if the issue in tail will bring his writ of *formedon* against the stranger that was the last feoffee, and that by

¹ Instead of "collateral warranty of the ancestor is made," the best French texts authorize "a collateral ancestor releaseth."

² Probably the words "the ancestor" should be inserted here. They are not in any French text. They are suggested in Ritso's *Science of the Law*, 114, where it is said: "I should read, 'and the ancestor dieth without issue'; for it is not the discontinuee who is here spoken of, nor the feoffee who hath the estate upon condition, but the collateral ancestor of the tenant in tail, who made the warranty." The suggestion is approved in Hargrave and Butler's notes.

³ { &c. }

the uncle, the issue shall not be barred by the warranty that was made by the uncle to the first feoffee of his uncle, for that the said warranty was defeated and taken away, because the uncle took back to him as great an estate from his first feoffee to whom the warranty was made, as the same feoffee had from him. And the cause why the warranty is defeated is this, viz. that if the warranty should stand in his force, then the uncle should warrant to himself, which cannot be.

§ 744. But if the feoffee had made an estate to the¹ uncle for term of life, or in tail, saving the reversion, &c., or a gift in tail to the uncle, or a lease for term of life, the remainder over, &c. in this case the warranty is not altogether taken away, but is put in suspense during the estate that the uncle hath. For after that, that the uncle is dead without issue, &c., then he in the reversion, or he in the remainder, shall bar the issue in tail in his writ of *formedon* by the collateral warranty in such case, &c. But otherwise it is where the uncle hath as great estate in the land of the feoffee to whom the warranty was made, as the feoffee hath himself. *Causa patet.*

§ 745. Also, if the uncle after such feoffment made with warranty, or a release made by him with warranty,

¹ Instead of "the," the translation in Co. Lit. has "his." Ritso's Science of the Law, 114, says: "We should read, 'but if the feoffee had made an estate to the uncle,' meaning the uncle of the tenant in tail mentioned in the preceding section." Hargrave and Butler's notes, citing Ritso, say: "Here 'his' seems printed by mistake instead of 'the.'"

be attaint of felony, or outlawed of felony, such collateral warranty shall not bar nor grieve the issue in the tail, for this, that by the attainder of felony, the blood is corrupted between them, &c.

§ 746. Also, if tenant in tail be disseised, and after make a release to the disseisor with warranty in fee, and after the tenant in tail is attaint, or outlawed of felony, and hath issue and dieth; in this case the issue in tail may enter upon the disseisor. And the cause is for this, that nothing maketh discontinuance in this case but the warranty, and warranty may not descend to the issue in tail, for this, that the blood is corrupt between him that made the warranty and the issue in tail.

§ 747. For the warranty always abideth at the common law, and the common law is such, that when a man is attaint or outlawed of felony, which outlawry is an attainder in law, that the blood between him and his son, and all others which shall be said his heirs, is corrupt, so that nothing by descent may descend to any that may be said his heir by the common law. And the wife of such a man that is so attaint, shall never be endowed of the tenements of her husband so attained. And the cause is, for that men should more eschew to commit felonies.¹ But the issue in tail as to the tenements tailed is not in such case barred, because he is inheritable by force of the statute, and not by the course of the common law; and therefore such attainder of his father

¹ { &c. }

or of his ancestor in the tail,¹ shall not put him out of his right by force of the tail, &c.

§ 748. Also, if tenant in tail enfeoff his uncle, which enfeoffs another in fee with warranty, if after the feoffee by his deed release to his uncle all manner of warranty, or all manner of covenants real, or all manner of demands, by such release the warranty is extinct. And if the warranty in this case be pleaded against the heir in tail that bringeth his writ of *formedon*, to bar the heir of his action, if the heir have and plead the said release, &c., he shall defeat the plea in bar, &c. And many other cases and matters there be, whereby a man may defeat a warranty, &c.

§ 749. And it is to be understood, that in the same manner as the collateral warranty may be defeated by matter in deed or in law ; in the same manner may a lineal warranty be defeated, &c. For if the heir in tail bringeth a writ of *formedon*, and a lineal warranty of his ancestor inheritable by force of the tail, be pleaded against him, with this, that assets descended to him of fee simple, [which he hath] by the same ancestor that made the warranty ; if the heir that is demandant may annul and defeat the warranty, that sufficeth him : for the descent of other tenements of fee simple making nothing to bar the heir without the warranty, &c.

Now I have made to thee, my son, three books.

¹ { &c. }

TABULA.

THE FIRST BOOK

is of estates which men have in lands and tenements: that is to say:—

	CHAP. ¹
Of Tenant in Fee Simple.....	1
Of Tenant in Fee Tail.....	2
Of Tenant in Fee ² Tail after Possibility of Issue Extinct.....	3
Of Tenant by the Curtesy of England	4
Of Tenant in Dower.....	5
Of Tenant for Term of Life.....	6
Of Tenant for Term of Years.....	7
Of Tenant at Will by the Common Law.....	8
Of Tenant at Will by the Custom of a Manor.....	9
[Of Tenant by the Verge].....	10

THE SECOND BOOK ³

Of Homage.....	1
Of Fealty.....	2
Of Escuage.....	3
Of Knight's Service.....	4
Of Socage.....	5
Of Frankalmoign.....	6
Of Homage Ancestral.....	7
Of Grand Serjeanty.....	8
Of Petit Serjeanty.....	9

¹ This column is not in the earliest editions.

² Instead of "Fee," the earliest French texts authorize "the."

³ { is }

	CHAP.
Of Tenure in Burgage.....	10
Of Tenure in Villenage.....	11
Of ¹ Rents ²	12

And these two little books I have made to thee for the better understanding of certain chapters of the Ancient Book of Tenures.³

THE THIRD BOOK ⁴

Of Parceners (according to the course of the Common Law).....	1
[Of Parceners according to the Custom].....	2
Of Joint-Tenants.....	3
Of Tenants in Common.....	4
Of Estates in Lands and Tenements on Condition.....	5
Of Descents which toll Entries.....	6
Of Continual Claim.....	7
Of Releases.....	8
Of Confirmations.....	9
Of Attoruments.....	10
Of Discontinuances.....	11
Of Remitters.....	12
Of Warranties ⁵	13

¹ { Three manner of }

² { *scil.* Rent Service, Rent Charge, and Rent Seck. }

³ Instead of "Book of Tenures," the earliest French texts authorize "books of tenures." The French texts and English translations before Coke follow the earliest texts in this matter; but Coke understands that Littleton means the short treatise entitled "The Old Tenures."

⁴ { *is* }

⁵ { *scil.* Warranty Lineal, Warranty Collateral, and Warranty which commences by Dissaisin. }

[EPILOGUS.]

And know, my son, that I would not have thee believe that all which I have said in these books is law, for I will not presume to take this upon me. But of those things that are not law, inquire and learn of my wise masters learned in the law. Notwithstanding albeit that certain things which are moved and specified in the said books are not altogether law, yet such things shall make thee more apt, and able to understand and apprehend the arguments and the reasons of the law, &c. For by the arguments and reasons in the law, a man more sooner shall come to the certainty and knowledge of the law.

Lex plus laudatur quando ratione probatur.

[FINIS.]

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